



Department of Education

Review of the Australian National University (ANU) Act 1991 and the governance arrangements of the ANU

Report 12 December, 2014

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Review of the Australian National University (ANU) Act 1991 and the governance arrangements of the ANU: executive summary; aim and methodology; the preparation of this Report and some general observations about the ANU; list of recommendations.

• Executive summary

The Terms of Reference for this Review, which was commenced in September, 2014, are set out in Appendix A; the aim and methodology are described below and the background to the Review is described in section 1 of the Report.

Our key recommendations have been influenced by our view, set out in section 2 of the Report, that legislation establishing universities should take into account the mission, history and values of universities generally and, in this case, the ANU in particular; the legislation should be mindful of the special nature of a university's stakeholders and encourage, or at least not discourage, institutional diversity. It follows from this that our recommendations in section 3 of the Report emphasise the need to articulate the on-going special role and responsibilities of the ANU as Australia's national university (Recommendation 1). The National Institutes Grant (NIG) is key to ANU fulfilling this role and responsibilities and we have recommended that information should be published, annually, about how the NIG has been used to advance the ANU's special role (Recommendation 2).

Section 2 of the Report suggests that legislation establishing universities should be succinct and flexible, allowing the Council to govern and management to manage without locking the university into structures that may not be appropriate to changed circumstances. It follows that, in section 4 of the Report, we recommend that the governance role and responsibilities of the ANU Council should be set out in broad terms (Recommendation 3).

Section 4 includes a discussion of the need to balance institutional autonomy and public accountability. Consistent with the aims of the Government to cut red tape, we do not favour achieving this balance through micro-regulation of the activities of universities or their councils. We have recommended that the current limits on ANU borrowing should be re-examined (Recommendation 4) and that the reach of the PGPA Act to the ANU should be clarified (Recommendation 5). We take the view that ANU should have a skills-based Council of a size and composition that gives confidence to various stakeholders (including government, staff, students, alumni, and the community generally) that the members have the skills necessary to properly govern the University. This is analysed in section 5 of the Report. Some changes are recommended, but, within specified parameters, key issues regarding the size and membership of Council - particularly the number of Council members and the number of staff and student members – would be questions for Council's determination rather than matters specified, as they now are, in legislation (Recommendation 7).

While there is much about the governance of the ANU that is exemplary, we have made some recommendations to ensure that already good governance arrangements are made even better. These include recommendations regarding:

- *responsibility for the approval of courses (Recommendation 6);*
- *Council Committees (Recommendations 8, 9, 11, 12, 13 and 14);*
- *the Chair of the Academic Board (Recommendation 10);*
- *improvements to arrangements regarding induction and professional development of Council members (Recommendations 16, 17 and 18) and the evaluation of Council's effectiveness (Recommendation 26);*
- *the relationship between Council, the Vice-Chancellor, management and the University generally (Recommendations 19, 20, 21, 22, 23, 24 and 25);*
- *meetings and meeting papers (Recommendations 27 and 28);*
- *consultation with staff and students (Recommendation 29).*

The Recommendations are listed below. A number of suggestions are also made (see the list in Appendix J); these are matters that we suggest the ANU Council should consider, but about which we do not feel strongly enough to make a formal recommendation.

• Aim and methodology

The aim of this Review is to refresh the ANU Act 1991 and the governance arrangements of the ANU to:

- align them with contemporary governance and management practices
- ensure that they are fit for purpose in the new higher education policy environment
- help the University to aspire to high international standards.

The Review aims to recommend new strategic governance arrangements that will provide an example of best (or, as we prefer to say, 'better') practice governance that could be adopted by other Australian universities. The Terms of Reference for the Review are set out in Appendix A to this Report.

For the purpose of this Review, we have taken 'governance' to reflect the following dimensions identified by the Institute on Governance:

Governance determines who has power, who makes decisions, how other players make their voice heard and how account is rendered.¹

We sought to conduct the Review in a highly collaborative manner, working with a Reference Group made up of the Vice-Chancellor of the ANU, Professor Ian Young, and the Associate Secretary, Higher Education, Research and International, Department of Education, Mr Robert Griew.

The methodology adopted, and the five stages of the Review, are explained in Appendix B to this Report. The project involved:

The development of a *Better Practice University Governance Assessment Framework*² against which the ANU Act 1991 and the ANU's governance arrangements could be assessed

The ***Better Practice University Governance Assessment Framework***, which is set out as Appendix C to this Report, is broadly based on Deloitte's "Global Governance Best Practice

¹ <http://iog.ca/defining-governance/> (accessed 11 November, 2014).

² In this Report, the *Better Practice University Governance Assessment Framework* is sometimes referred to as "the Framework" or "better practice".

Framework" which has been modified so that it is directed at universities. The Framework addresses:

- Governance: Council structures and processes
- Strategy: development and monitoring
- Performance: including monitoring management's execution of approved plans
- Integrity: setting the ethical tenor for the University and promoting regulatory compliance
- Talent: selecting, supporting and evaluating the Vice-Chancellor and overseeing talent programs, particularly those related to executive leadership
- Risk governance: monitoring risk exposures and setting 'risk appetite'.

It is generally accepted that Australia needs a diverse Higher Education sector. Institutional diversity will not be encouraged by a 'one size fits all' approach to university governance. The **Better Practice University Governance Assessment Framework** is therefore flexible enough to ensure that, when it was applied to the ANU, account was taken of the University's mission, history and values.

An assessment of the ANU Act and the current governance arrangements against the Better Practice University Governance Assessment Framework

The **ANU Governance Assessment** is set out in Appendix D to this Report. This makes a number of findings based on the application of the Framework to the Act and the governance arrangements of the ANU.

In the list of recommendations set out below, we have mapped the findings in the **ANU Governance Assessment** against the recommendations made in this Report.

• The preparation of this Report and some general observations about the ANU

This Report builds on the **Better Practice University Governance Assessment Framework** and the findings in the **ANU Governance Assessment** to address the Terms of Reference for the Review.

This Report, which was written by Professor (Emeritus) Sally Walker, includes formal recommendations, which are set out below, and some 'suggestions'. The suggestions, which are listed in Appendix J, are just that – ideas that we suggest the ANU Council should consider, but about which we do not feel strongly enough to make a formal recommendation.

In preparing this Report we examined numerous documents and familiarised ourselves with material published on ANU's website. We also conducted a number of 'stakeholder' consultations (see Appendix E). We sought to understand, not only ANU's governance arrangements, but also its mission, history and values. We wanted to understand 'how ANU works', not just what formal structures and systems are in place.

All those we consulted were generous with their time and frank in answering our questions. We thank, in particular, the Chancellor, the Hon Gareth Evans AC QC, the Vice-Chancellor, Professor Ian Young AO, and Ms Kate Molloy, Director, Corporate Governance and Risk Office, for their substantial assistance.

The ANU has achieved a great deal since 1 August 1946, when the Bill establishing The Australian National University was passed by the Federal Parliament. By any measure, the ANU is a highly successful University; currently it:

- is ranked first in Australia and 25th in the world in the 2014 *QS World University Rankings*; ³ second in Australia and 74th in the world in the 2014 *Shanghai Jiao Tong World University Rankings*; and second in Australia and 45th in the world in the 2014-2015 *Times Higher Education World University Rankings*. ⁴
- is ranked by the Times Higher Education as the world's 7th most international university. ⁵
- has six nobel laureates among its staff or alumni. ⁶
- has partnerships with some of the great research universities of the world as the only Australian member of the *International Alliance of Research Universities* ⁷ and, at the same time, shows a willingness to work with other Australian universities to build research capacity. ⁸

It is difficult to imagine that this success could have been achieved in the absence of good governance. Indeed, in conducting our consultations we emphasised, as we do now, that there is much about the governance of the ANU that is exemplary.

The objective of this review has been to make recommendations to 'refresh' the Act, given that it is some time since the current Act was enacted, and to assess whether already good governance arrangements might be made even better.

• Recommendations

In this section, the recommendations are mapped against the findings from the ANU Governance Assessment.

*** Recommendations that impact on the ANU Act.

1. *** It is **recommended** that the ANU Act should include a preamble and revised statements of the University's functions (or purpose) and powers; these should emphasise the special role and responsibilities of the ANU. (Finding 1)
2. It is **recommended** that the ANU should include within its Annual Reports an explanation of how the National Institutes Grant has been used in the relevant year to advance the University's special role as articulated in the preamble, the statement of the University's functions (or purpose) and its powers.
3. *** It is **recommended** that the ANU Act should provide that:
 - the governing authority of the University is the Council;

³ <http://www.topuniversities.com/university-rankings/world-university-rankings/2014> (accessed 8 December, 2014).

⁴ <http://www.australianuniversities.com.au/rankings/> (accessed 30 November, 2014).

⁵ <http://www.timeshighereducation.co.uk/news/the-100-most-international-universities-in-the-world/2010783.fullarticle> (accessed 30 November, 2014).

⁶ <http://www.anu.edu.au/about/awards-achievements> (accessed 30 November, 2014).

⁷ <http://www.iaruni.org/about-us/members> (accessed 30 November, 2014).

⁸ See, for example, <http://www.anu.edu.au/about/partnerships/charles-darwin-university> ; <http://www.anu.edu.au/about/partnerships/james-cook-university>; <http://www.anu.edu.au/about/partnerships/university-of-newcastle>; <http://www.anu.edu.au/about/partnerships/university-of-south-australia>; <http://www.anu.edu.au/about/partnerships/university-of-southern-queensland> (accessed 30 November, 2014).

- subject to the Act and the Statutes, the Council may do anything necessary or convenient to be done for, or in connection with, its role as the governing authority of the University; this includes the making of Statutes, provided that such Statutes are not inconsistent with the Act or the PGPA Act;
 - the primary responsibilities of the Council include:
 - o appointing the Chancellor;
 - o appointing the Vice-Chancellor and monitoring her or his performance;
 - o setting the University's strategic goals and monitoring progress towards the achievement of those goals;
 - o overseeing academic activities and management effectiveness; and
 - o ensuring responsible financial and risk management and compliance with legislation
 - the Council is to act in all matters concerning the University in the way it thinks will best promote the interests of the University.
4. *** It is **recommended** that the relevant Australian Government portfolios should consider whether section 44 of the ANU Act, which deals with borrowing limits, is of continuing relevance.
5. *** It is **recommended** that the reach and application of the PGPA Act to the ANU should be clarified. (Finding 5)
6. It is **recommended** that ANU clarifies and makes known who is responsible for considering and formally approving degree and other award programs (i) on academic and (ii) on business grounds, including the review of existing programs, and that the Council considers and approves the high level principles to be applied to determine whether to offer such a program (this would include considering high level policy issues such as whether the University should offer sub-degree level qualifications) and the high level principles regarding the fees to be charged, where relevant.
7. *** It is **recommended** that:
- the ANU Council should be constituted as follows:
 - o two official members - the Chancellor and Vice-Chancellor.
 - o at least three and up to six members appointed by the Council – the number to be determined by Council and specified in a Rule. At least one of the Council appointed members must be external to the University, that is, not a current member of staff or student. The Nominations Committee would make recommendations to Council regarding who should be the external Council appointed member(s). If Council were to decide that there should be staff or student members, they must be appointed or elected *ad personam* with the exception of the Chair of the Academic Board who may be appointed by virtue of her or his office.
 - o at least three and up to six external members appointed by the Minister. The number of members appointed by the Minister would be determined by Council and specified in a Rule, but the number must be equal to or greater than the number of Council appointed members. The Nominations Committee would be required to put forward the names of people who the Committee considers would be appropriate for appointment (or re-appointment) by the Minister, specifying the reasons for the suggestion. The Nominations Committee would be required to put forward at least one more name than the number of vacancies. The Minister would be required to consider the Nominations Committee's suggestions, but would not be bound to appoint one of those suggested. The Minister would be required to give reasons for the appointment of a particular person.

- the Nominations Committee, the Council and the Minister should be required to have regard to the desirability of ensuring that:
 - o there is a balance of skills, expertise and gender among members of the Council;
 - o regard is had to the skills necessary to ensure that the Council can fulfil its responsibilities under the legislation; and
 - o Council members have an appreciation of the purposes of the University, its independence and academic freedom, and the capacity to appreciate the national role of the University and what the University's external community needs from it.
- at least two of the Council members would be required to have a high level of relevant financial expertise and at least one member would be required to have a high level of relevant commercial expertise.
- Council appointed members and members appointed by the Minister should be appointed for a period not exceeding four years; they could be renewed, but unless the Council, in the case of Council appointed members, or the Minister, in the case of members appointed by the Minister, determines otherwise in respect of a particular member, Council appointed members and members appointed by the Minister would not be permitted to hold office for more than eight years.
- Council members, other than members of staff, should be paid and time-release from their usual duties should be authorised for staff members.

(Findings 3, 6)

8. It is **recommended** that Council consider establishing a *Campus Planning Committee* being a Council Committee charged with providing advice to Council on the development and periodic review of master plans for the University's Campus or, if its terms of reference were to extend to advising Council on the design and implementation of major infrastructure projects and/or the naming of buildings, Council might consider establishing it as a *Buildings and Estates Committee*.
9. It is **recommended** that, in the case of Council committees:
 - each committee's terms of reference should be easily located and formatted consistently
 - short biographies of each committee member should be published on the web site
 - an annual schedule of business should be developed that links the committee's terms of reference to a schedule of matters to be addressed at the various committee meetings scheduled for that year
 - Council should consider annual reports from each Committee evaluating its effectiveness against its schedule of business and terms of reference.

(Findings 7 and 8)

10. It is **recommended** that, in due course, consideration be given to the Chair of the Academic Board being elected by all academic staff or by the professoriate.
11. It is **recommended** that the *Committee on Conditions and Appointment of the Vice-Chancellor* should be replaced by a *Remuneration Committee* with expanded terms of reference. (Finding 10)
12. *** It is **recommended** that section 37 of the ANU Act (acting appointments) should apply only to the office of Vice-Chancellor and that Council should integrate the

Emergency Appointment (Vice-Chancellor) Committee into the Remuneration Committee in which case it might be titled Remuneration and Appointments Committee.

13. It is **recommended** that, taking into account the advice of its Finance Committee, the Council should determine whether it is necessary to have an Investment Advisory Sub-Committee as a Sub-committee of the Finance Committee; if so, both its formal terms of reference and, in practice, the work it is asked to undertake, should be those of a governance committee and the Corporate Governance and Risk Office should assume responsibility for it. This would not preclude the management of the University establishing a management committee, even one drawing on external advice, to guide the day to day operations of the Investment Office. (Finding 9)
14. It is **recommended** that the Nominations Committee should develop a 'skills register' to ensure that the members of Council, collectively, meet the needs of a skills-based board. (Finding 4)
15. It is **recommended** that the Council should re-examine the Guidelines by reference to which the Nominations Committee operates to ensure that they reflect the skills required of Council members and the responsibilities of Council members.
16. It is **recommended** that the Induction Program should be expanded to include material acquainting new members with the Higher Education sector; this material should be provided in written form well before the induction briefing sessions. (Finding 11)
17. It is **recommended** that the Chancellor make contact with all Council members in the second quarter of each year to discuss their professional development needs. A list of possible programs should be made available to Council members and discussions held regarding what, if anything, might be beneficial for each particular member. A similar process should extend to members of Council Committees who are not Council members. (Finding 12)
18. It is **recommended** that the ANU take a leadership role in the sector by working with other Australian universities to consider jointly sponsoring the development of a program by an appropriate provider targeted at the professional development needs of members of university governing bodies and governance committees, with modules of the program being offered each year.
19. It is **recommended** that, within a short time after each Council meeting, a short statement should be placed on the Council website, authorised by the Chancellor, summarising 'what happened at Council'.
20. It is **recommended** that the *Vice-Chancellorship Statute* be amended to adopt more contemporary language regarding the role of the Vice-Chancellor.
21. It is **recommended** that the *Vice-Chancellorship Statute* be amended to deal with the process to be followed if there is a breakdown in relationships or a breach of duty.
22. *** It is **recommended** that section 35 of the current ANU Act should be repealed on the understanding that, as chief executive officer, the Vice-Chancellor has authority to make executive appointments, reporting the appointment to Council, with Council designating in a Statute those roles in respect of which it reserves the power to make appointments on the recommendation of the Vice-Chancellor.

23. It is **recommended** that the *Chancellorship Statute* should provide that the Chancellor does not hold an executive role.
24. It is **recommended** that section 3.3 of the *Chancellorship Statute* should provide that a breach of the duties imposed by the PGPA Act could constitute a ground for forming the opinion that the Chancellor no longer retains the Council's confidence.
25. It is **recommended** that Council should adopt protocols to describe the interface between members of Council (and members of Council Committees) and the staff of the University; these protocols should make it clear that the Vice-Chancellor is the primary source of advice to Council and Council Committees and, with the exception of the processes of Council or Council Committees, members of Council and members of Council Committees may give directions to members of staff only with the express or implied consent of the Vice-Chancellor.
26. It is **recommended** that, in addition to the current biennial discussions with Council members, Council should address the question of its collective effectiveness annually. (Finding 13)
27. It is **recommended** that Council adopt rules in the form of 'Standing Orders' or 'Operating Provisions' dealing with the conduct of meetings.
28. It is **recommended** that those rules should provide that, at the commencement of each Council meeting, before observers are admitted, Council members should be provided with an opportunity to request that an item, not already designated as a confidential item, should be considered *in camera*; at this time, Council members could also determine whether an item designated as confidential in the papers should be considered in open session.
29. It is **recommended** that Council establish protocols regarding consultation with staff and students.

1. Background

The ANU is the only Australian university governed by an Act of the Australian Parliament. In the more than two decades since the enactment of the Australian National University Act 1991 (Cth), the Higher Education sector has changed significantly. In the case of the ANU:

- in 1991 ANU had 7,858 students (934 of these were international students);⁹ in 2013 ANU had 21,149 students (5,608 of whom were international students);¹⁰
- in 1991 ANU had 3,424 staff members;¹¹ in 2013 there were 4,272 staff members;¹²
- in 1991 ANU had total operating revenue of \$368m;¹³ in 2013 ANU's total income was more than \$1 billion.¹⁴

The future promises even more change as the Higher Education sector responds to increased competition and global developments. Universities in other countries in our region are poised to move up the world university rankings. Online learning is becoming more popular and accepted, particularly with certain cohorts of learners, thereby reducing the relevance of national boundaries. Australian universities are becoming more internationally focused in terms of research collaborations and sources of research funding.

Universities are being encouraged to engage with industry in relation to research and commercialisation; some are entering into partnerships with other universities and commercial organisations to deliver teaching programs. Relative to universities in some other parts of the world, philanthropy in support of Australian universities is at its infancy, but its significance is now recognised.

Deregulation is creating a more competitive higher education environment. In 2012 the previously imposed limits on domestic bachelor-degree student numbers at universities were fully lifted. This replaced the 'supply driven' system, in which the Australian government allocated student places to universities, with a 'demand driven' system that allows universities to respond to student demand. The changes proposed in the 2014 – 2015 Federal Budget, which include allowing universities to set their fees for domestic undergraduate students and making Commonwealth Supported Places available to non-university higher education providers, will make the environment in which the ANU operates even more competitive and market-driven.

In view of the fact that change seems to be a constant feature of the environment in which universities operate, one of the matters we considered was whether the ANU Act and ANU's governance arrangements position ANU well to respond to future changes and the challenges they will bring.

This Review commenced in September, 2014. On 3 October, 2014 the ANU announced that the ANU Council had agreed to a proposal to commence divestment of stocks in certain companies following an external examination of ANU domestic equities. According to a media release,

⁹ The Australian National University 1991 Report pp 22 -23, 28.

¹⁰ Australian National University Annual Report 2013 p 30.

¹¹ The Australian National University 1991 Report pp 120.

¹² Australian National University Annual Report 2013 p 90.

¹³ The Australian National University 1991 Report p 267.

¹⁴ Australian National University Annual Report 2013 p 130.

which was issued by the University, the analysis was commissioned by the University as part of its Socially Responsible Investment (SRI) Policy and provided environmental, social and governance ratings regarding ANU-held domestic stocks. As a result of the ratings, the University announced it would divest its holdings in certain companies which it named in its media release.¹⁵ This announcement created significant media publicity with some critical of the decision and others supporting it.¹⁶ Given the timing of our Review, it was inevitable that this matter was raised by several of the people we consulted. While it is not, of course, appropriate for this Review to assess the merits of the decision, the Review did provide an opportunity for Council members and members of the University's leadership and management teams to reflect on the way the decision was reached from a governance perspective. We have taken the observations made by Council members and others into account in making our suggestions and recommendations regarding the Investment Advisory Committee (see paragraph 6.6 below) and regarding meetings and meeting papers (see section 10 below). If these matters are addressed in the manner we suggest and recommend, the governance framework will be well equipped to deal with significant proposals of this kind.

¹⁵ ANU Media Release "[University to divest holdings in seven companies](http://news.anu.edu.au/2014/10/03/university-to-divest-holdings-in-seven-companies/)" <http://news.anu.edu.au/2014/10/03/university-to-divest-holdings-in-seven-companies/> (accessed 19 October, 2014).

¹⁶ <http://www.canberratimes.com.au/act-news/anu-divests-in-seven-resource-and-mining-companies-20141003-10pwlo.html#ixzz3GYQ0qCqz> (accessed 19 October, 2014); <http://www.abc.net.au/news/2014-10-13/pyne-says-anu-decision-to-ditch-mining-companies-bizarre/5808674> (accessed 19 October, 2014); <http://www.abc.net.au/news/2014-10-15/anu-investment-decision-backed-by-business-people/5814884> (accessed 19 October, 2014).

2. General considerations and principles regarding legislation establishing universities and regarding university governance arrangements

2.1 Universities and their stakeholders

See Better Practice University Governance Assessment Framework (Appendix C to this Report) para 2.1.7.3.

Australian universities are financially substantial organisations. Improving their financial position is not, however, an end in itself, but a means to furthering their commitment to improving society through their primary functions of teaching, research and community engagement. When considering their governance practices, it is important to take into account that a university is a community in which robust (but respectful) discussion and disagreement are not only tolerated, but encouraged.

The statutes establishing Australian universities often provide that the university 'consists of' the Council (or Senate); the staff (including, in some cases, the staff of affiliated colleges); the graduates (sometimes referred to as 'convocation'); the students; and, in some cases, the emeritus professors of the University.¹⁷ The current ANU Act does not include such a provision although the 1946 version did.¹⁸ The **Better Practice University Governance Assessment Framework** does not suggest that such a provision is necessary or even desirable. Nonetheless, provisions of this kind illustrate the fact that the 'membership' of a university is rather different from that of a corporation's shareholders.¹⁹

The Australian Government is also an important stakeholder in Australian universities, particularly the ANU. In 2012,²⁰ the ANU recorded total revenue (attributable to University continuing operations) of almost \$1billion. As the analysis in Appendix G shows, approximately two-thirds of this revenue takes the form of financial assistance from the Australian Government, with the majority of the remaining funds coming from fees and charges (largely comprising fee paying overseas student revenue). Appendix G also shows that, of the Go8 Universities, the ANU receives the smallest amount of funding from State and local governments with only \$2.4 million received in 2012. This is in comparison to \$81.7 million received by the University of Melbourne and \$61.4 million by the University of Queensland.

¹⁷ For example, the New South Wales legislation regarding each university establishes "A University, consisting of: a Council; the professors and full-time members of the academic staff of the University and such other members or classes of members of the staff of the University as the by-laws may prescribe; and the graduates and students of the University" (see for example University of New South Wales Act 1989 (NSW) s 4); University of Western Australia Act 1911 (WA) s 4 - the University shall consist of a Senate, Convocation, staff and graduate and undergraduate students; University of Adelaide Act 1971 (SA) s 4(2) - the University consists of the Council, members of the academic staff, members of the general staff, graduates and students; University of Melbourne Act 2009 (Vic) s 4(3) - the University consists of the Council, staff, graduates, students, staff of affiliated colleges or other bodies designated from time to time by Council, emeritus professors.

¹⁸ Australian National University Act 1946 (Cth) s 4(1) "A University, consisting of a Council and Convocation, and graduate and under-graduate members, shall be established at Canberra, in the Australian Capital Territory."

¹⁹ For a full discussion see Orr J, "[Corporate Governance and members' rights at Australian Public Universities](http://www.clta.edu.au/professional/papers/conference2007/2007JO_CGMRAPU.pdf)", paper presented at the Corporate Law Teachers Association Conference 2007, Melbourne http://www.clta.edu.au/professional/papers/conference2007/2007JO_CGMRAPU.pdf (accessed 15 October, 2014).

²⁰ Reference is made to 2012 figures as these are the most recent for which easily accessible comparable data is available.

2.2 Some principles regarding university legislation and governance arrangements

See *Better Practice University Governance Assessment Framework (Appendix C to this Report)* para 1.2.

There are some core concepts that must be preserved in university legislation, particularly the distinction between governance and management and between the roles of Chancellor and Vice-Chancellor (see paragraphs 8.3 and 8.4 below). So far as is possible, the ANU legislation should be both succinct and flexible enough to allow the Council to govern and the Executive to manage without locking the University into structures that may not be appropriate in changed circumstances. Appendix I lists a number of sections in the ANU Act that are obsolete; in most cases this is because the 1991 Act is too prescriptive about structures, assuming that what operated in 1991 would continue to operate in the future. In the current and future Higher Education environment in Australia and internationally, universities will be better able to operate effectively if they have flexibility to address changed circumstances.

It is difficult to legislate for good working relationships. There have been examples in some Australian universities of working relationships breaking down between and among those responsible for governance and those with management responsibilities. The incidents that have occurred have in common that (i) it would appear that they could not have been anticipated; and (ii) they were extremely de-stabilising for the university, distracting it from its core activities. Good relationships will be encouraged if there is clarity about structural arrangements and about the systems that are in place to deal with the break-down of relationships should that occur.

University legislation and associated governance arrangements should:

- be succinct and allow for flexibility so as to not restrict the capacity of the University to adapt to changing circumstances
- be mindful of the nature of a university's stakeholders (see paragraph 2.1 above)
- take into account the mission, history and values of universities generally and, in this case, ANU in particular (see paragraphs 3 and 4.2 below)
- be clear about processes should relationships break down (see paragraphs 8.3 and 8.4 below).

In view of the more competitive environment in which universities are now operating, another characteristic that university legislation should exhibit is that it should encourage institutional diversity or, at the very least, not discourage it; in the case of the ANU, a key aspect of this is supporting the ANU to fulfil its role as Australia's *national* university.

3.The ‘special’ role of the Australian National University: the statement of functions (or purpose), a preamble to the Act, the powers of the University and reporting on the NIG

The ANU was established in 1946:

The philosophy of the new University was simple: the State universities would generate the first degree graduates and then the ANU, manifestly powerful at the frontiers of research, would absorb the best, exposing them in their graduate training to scholars of exceptional ability and distinction.²¹

Section 6 of the Australian National University Act 1946 (Cth) provided that the functions of the University included:

- (a) To encourage, and provide facilities for, post-graduate research and study, both generally and in relation to subjects of national importance to Australia;
- (b) To provide facilities for university education for persons who elect to avail themselves of those facilities and are eligible so to do; and
- (c) Subject to the Statutes, to award and confer degrees and diplomas.

Reflecting the research focus of the ANU, section 7 of the 1946 Act referred to the establishment of research schools; section 8 referred to the University providing specialist training for members of the Public Service or the staff of any public authority.

The ANU website currently states:

ANU's founding mission was to be of enduring significance in the post-war life of the nation, to support the development of national unity and identity, to improve Australia's understanding of itself and its neighbours, and to contribute to economic development and social cohesion. Its mandate was to undertake 'postgraduate research and study both generally and in relation to subjects of national importance'. This national mission gives ANU a distinctive relationship with the Australian Federal Government.²²

It has been suggested that:

While the ANU achieved much of its original mission, a distinctive character eroded over time. ... The ANU is no longer a non-teaching research institution but instead, following the familiar model, became an excellent autonomous, professional, comprehensive, secular, public and commuter university.²³

ANU does now largely follow the 'familiar model', but, notwithstanding this, a very strongly and consistently expressed view within the ANU, amongst its present and former Council members,

²¹ The Australian National University, Annual Report 1991, pp 2-3.

²² <http://about.anu.edu.au/profile/history> (accessed 20 October, 2014).

²³ Glyn Davis, "The Australian Idea of a University" [Meanjin](http://meanjin.com.au/articles/post/the-australian-idea-of-a-university/) <http://meanjin.com.au/articles/post/the-australian-idea-of-a-university/> (accessed 20 October, 2014).

staff (academic and professional) and students, was that ANU still has a special “national” role and a distinctive character. This view regarding the ongoing role and character of the ANU is evident in documents such as ANU’s Strategic Plan - “*ANU by 2020*” - which refers to ANU as “a resource for the nation” and to the “distinctive excellence” of ANU.

ANU’s distinctive role in respect of matters of “national importance to Australia” is also examined in the paper set out in Appendix F – *Maintaining ANU’s Distinctive Research Excellence in Disciplines of National Importance: The Significance of the National Institutes Grant* - a document written by ANU’s Chancellor and Vice-Chancellor.

Little of this is, however, evident in the current ANU Act. Section 5 of the 1991 Act sets out the functions of the ANU:

- (1) The functions of the University include the following:
 - (a) advancing and transmitting knowledge, by undertaking research and teaching of the highest quality;
 - (b) encouraging, and providing facilities for, research and postgraduate study, both generally and in relation to subjects of national importance to Australia;
 - (c) providing facilities and courses for higher education generally, including education appropriate to professional and other occupations, for students from within Australia and overseas;
 - (d) providing facilities and courses at higher education level and other levels in the visual and performing arts, and, in so doing, promoting the highest standards of practice in those fields;
 - (e) awarding and conferring degrees, diplomas and certificates in its own right or jointly with other institutions, as determined by the Council;
 - (f) providing opportunities for persons, including those who already have post-secondary qualifications, to obtain higher education qualifications;
 - (g) engaging in extension activities.
- (2) In the performance of its functions, the University must pay attention to its national and international roles and to the needs of the Australian Capital Territory and the surrounding regions.

Section 5 includes what could be best described as ‘glimpses’ of the special role of the ANU - the reference in paragraph 5(1)(b) to ‘subjects of national importance to Australia’ and the requirement in sub-section 5(2) that the University ‘pay attention to its national and international roles’ - but these do not fully or purposefully articulate the role of the ANU as a *national* university or how its ‘international role’ is any different from that of other Australian universities.

While around the world there are other ‘national’ universities, our examination did not reveal any common statement of purpose in the legislation establishing them. ANU would face some opposition from other Australian universities if it were to state, as another national university - the National University of Singapore (NUS) - does, that it is the country’s “flagship university”.²⁴ Nonetheless it should be possible to re-draft the functions of the ANU in its governing legislation so as to not only set out the familiar teaching and research functions of a university, but also to articulate the special, on-going purpose of ANU as Australia’s national university. This would need to be an authentic statement of the purpose of the University; there would need to be a commitment to the University fashioning its operations around the responsibilities arising from this special purpose.

Re-drafting section 5 of the ANU Act would better facilitate compliance with section 15 of the Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act) which requires the Council to govern the University in a way that promotes the achievement of the purposes of the University. Most importantly, it would provide a clear commitment to the ANU’s continuing

²⁴ [National University of Singapore, Corporate Information](http://www.nus.edu.sg/about-nus/overview/corporate-information), <http://www.nus.edu.sg/about-nus/overview/corporate-information> (accessed 20 October, 2014).

special character and associated responsibilities as Australia's national university and provide the basis for framing clearer accountability around the National Institutes Grant (NIG). The importance of the NIG is explored in *Maintaining ANU's Distinctive Research Excellence in Disciplines of National Importance: The Significance of the National Institutes Grant* which is set out in Appendix F and in our own analysis, in Appendix G. These documents demonstrate that the NIG is the critical investment in establishing the ANU's capacity as a nationally and internationally significant research institution. Without the NIG, the ANU would be at a considerable resource disadvantage relative to all the Go8 Universities and, indeed, other Australian universities, which receive more funding from their student bases and, in many cases, from relevant State governments. Appendices F and G provide evidence of the effectiveness of the NIG in generating exceptional research outcomes for the ANU and Australia more broadly; this has underpinned the ANU's success in world university rankings as described earlier in this Report.

The international role and aspirations of the ANU could also be better reflected in the statement of functions or, as we prefer, statement of purpose.

The legislation regarding each Victorian university includes a preamble which sets out the history and special characteristics of the university. The preamble to the University of Melbourne Act 2009 (Vic) is set out as Appendix H to this Report by way of example. In our discussions with ANU's Council members and the Vice-Chancellor, there was considerable enthusiasm for including a preamble in ANU's legislation. This should encompass not only a statement of the University's history and characteristics, but also, most importantly, the *responsibilities* arising from ANU's role as Australia's national university. It is these responsibilities that might make manifest the distinctive, national character of the ANU and its international role.

Council members were not only enthusiastic about including such a preamble, but they also expressed a preference for Council drafting it, for consideration by the Office of Parliamentary Counsel, rather than having us draft it for them. We **suggest** that the ANU community - academic and professional staff, students and other stakeholders - be given an opportunity to comment on the preamble as it is developed. A similar approach could be taken to the drafting of the University's functions (or purpose).

We add a note of caution. Both the preamble and the functions (or purpose) should be seen as enduring statements; they should not be overly influenced by current circumstances, or even the University's current Strategic Plan. While the preamble and the functions (or purpose) should be based on an understanding of the history of the ANU, they should look to the future, articulating the ongoing purpose and future aspirations of ANU and, importantly, how these are different from those of other Australian universities. The commitment of the University to directing its operations at achieving its unique ambitions for the nation must be authentic and convincing.

As Appendix F shows, there are areas of research and teaching that are of ongoing importance to Australia's national interest that the ANU has prioritised over other, potentially higher revenue generating, activities that are well provided for in other Australian universities. The ANU's research and teaching strengths in Asia and the Pacific and the resource its expertise affords in relation to the delivery of aid programs in the region provides just one illustration of the special, on-going role of the ANU as Australia's national university. It is, however, important that the ANU shows how it frames its operations around the responsibilities arising from its special purpose; it needs to inform the public about its priorities and how it is fulfilling its responsibilities. In particular, the way the NIG supports the ANU's special role should be explained; the ANU's Annual Reports provide an appropriate vehicle for such an explanation.

Section 6 of the ANU Act sets out the powers of the University. Sub-section 6(1) gives the University power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions. Sub-section 6(2) then sets out a somewhat eclectic, inclusive list of powers, from "to make astronomical, seismological, meteorological and

other scientific observations” to “to erect buildings” and “to employ staff”. Consistent with our view that the legislation should be succinct, we recommend that sub-section 6(2) should include reference only to those powers:

- (a) about which there may be doubt regarding the capacity of the University to exercise that power; or
- (b) which emphasise the special role of the ANU.

The preamble, the revised statement of the ANU’s functions (or purpose) and its powers are connected to the NIG. We recommend that the ANU includes within its Annual Report an explanation of how the NIG has been used in the relevant year to advance the University’s role as Australia’s national university and its distinctive excellence in disciplines of national importance as articulated in the preamble, the statement of the University’s functions (or purpose) and its powers. Given the complexity of this, and to avoid doubt, we **suggest** that a member of the senior executive should be designated as holding responsibility for documenting how the NIG is allocated.

1. It is **recommended** that the ANU Act should include a preamble and revised statements of the University’s functions (or purpose) and powers; these should emphasise the special role and responsibilities of the ANU.
2. It is **recommended** that the ANU should include within its Annual Reports an explanation of how the National Institutes Grant has been used in the relevant year to advance the University’s special role as articulated in the preamble, the statement of the University’s functions (or purpose) and its powers.

4. The roles and responsibilities of the ANU Council

4.1. Council as the governing authority

See Better Practice University Governance Assessment Framework (Appendix C to this Report) paras 1.2, 2.1.1, 2.2, 2.3, 2.4, 2.5 and 2.6.

Section 8 of the ANU Act provides that “The governing authority of the University is the Council.” Section 9 sets out the powers of Council:

- (1) Subject to this Act and the Statutes, the Council has the entire control and management of the University.
- (2) The Council is to act in all matters concerning the University in the way it thinks will best promote the interests of the University.
- (3) The powers of the Council include, but are not limited to, the power to appoint persons (whether members of the staff of the University or not) to positions of responsibility within the University.

Broad statements of Council's powers such as that in sub-section 9(1) of the ANU Act, which refers to Council having “the entire control and management of the University”, are not uncommon in university legislation.²⁵ Nonetheless, such statements do little to promote clarity regarding the roles and responsibilities of Council. A better approach would be one in which the legislation:

- specifies, as section 8 currently does, that the governing authority of the University is the Council;
- provides that, subject to the Act and the Statutes, the Council may do anything necessary or convenient to be done for, or in connection with, its role as the governing authority of the University;
- sets out the primary responsibilities of the Council;
- provides that the Council is to act in all matters concerning the University in the way it thinks will best promote the interests of the University.

It will be important to ensure that the list of primary responsibilities is drafted at a level high enough to not limit the Council in the future; it should be made clear that it is not an exhaustive statement of the responsibilities of Council. We considered a detailed list based on a statement of primary responsibilities already adopted by the ANU Council:

- (a) appoint the Chancellor and Pro-Chancellor
- (b) appoint the Vice-Chancellor as the chief executive officer of the University and monitor their performance
- (c) oversee the strategic direction of the University
- (d) oversee and review the management of the University and its performance
- (e) establish policy and procedural principles, consistent with legal requirements and community expectations

²⁵ In New South Wales the legislation refers to the governing body having the “control and management of the affairs and concerns of the University” – see for example, The University of Sydney Act 1989 (NSW) s 16(1A)(b); University of New South Wales Act 1989 (NSW) s 15(1A)(b). In Victoria, the governing body has “the general direction and superintendence of the University” – see, for example, Monash University Act 2009 (Vic) s 8(2)(b); Melbourne University Act 2009 (Vic) s 8(2)(b).

- (f) approve and monitor systems of control and accountability, including general overview of any controlled entities, that is, those which satisfy the test of control in s.50AA of the Corporations Act
- (g) oversee and monitor the assessment and management of risk across the University, including commercial undertakings
- (h) oversee and monitor the academic activities of the University
- (i) approve significant commercial activities of the University
- (j) ensure the effective operation of Council including the induction and professional development of Council members and the evaluation of the performance of Council and its committees.²⁶

This detailed list is loosely based on the *Voluntary Code of Best Practice for the Governance of Australian Universities*,²⁷ but it expands on it. The list is similar to, but not the same as, the primary responsibilities of Council set out in the legislation establishing South Australia's universities.²⁸ One problem with detailed lists of this kind is that comparisons may be made between them. Despite any form of words making it clear that this is not an exhaustive statement of Council's responsibilities, inferences may be drawn from the fact that a particular responsibility is or is not included. Accordingly, we favour the legislation referring to the primary responsibilities of the ANU Council in broader terms as including:

- setting the University's strategic goals and monitoring progress towards the achievement of those goals;
- overseeing academic activities and management effectiveness; and
- ensuring responsible financial and risk management and compliance with legislation.²⁹

Because of the importance of their roles, we would include specific reference to:

- appointing the Chancellor; and
- appointing the Vice-Chancellor and monitoring her or his performance.

By specifying in the legislation that Council is the University's governing authority, and including this broad list of Council's primary responsibilities, the legislation would encompass the roles and responsibilities identified in paragraph 1.2 of the **Better Practice University Governance Assessment Framework** set out in Appendix C.

The inclusive list of primary responsibilities would not preclude the Council from listing more detailed responsibilities in a subsidiary document, perhaps under the broader headings. A subsidiary document could be changed from time to time in response to changing circumstances.

This list of the primary responsibilities of Council should be linked to the development of Council's annual program (see the suggestion in paragraph 10); it should provide the framework for the induction program (paragraph 7.1) and the evaluation of the effectiveness of the Council (paragraph 9).

Section 50 of the ANU Act gives Council power to make Statutes not inconsistent with the Act or the Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act).³⁰ Sub-section 50(1) provides that the Statutes may prescribe matters:

²⁶ ANU Council Members' Handbook Volume 12, 2014, page 8.

²⁷ <https://www.universitiesaustralia.edu.au/efficiency-and-governance/legislation-and-governance/University-Governance> (accessed 17 October, 2014).

²⁸ University of Adelaide Act 1971 (SA) s 9(1); University of South Australia Act 1990 (SA) s 10(2); Flinders University of South Australia Act 1966 s 5(2).

²⁹ This list is not dissimilar to a statement in the Council Members' Handbook Volume 12, 2014, page 1, which is, in turn, sourced from a presentation prepared by the Chancellor, the Hon Gareth Evans.

³⁰ The PGPA Act is further described in paragraph 4.3 below.

- (a) required or permitted by this Act to be prescribed by the Statutes; or
- (b) necessary or convenient to be prescribed by the Statutes for carrying out or giving effect to this Act.

Sub-section 50(2) sets out a long, eclectic, inclusive list of matters in respect of which the Council may make Statutes. These range from “the times, places and manner of holding lectures, classes and examinations, and the number and character of such lectures, classes and examinations” to “the management, good government and discipline of the University”. Consistent with our principle that the legislation should be succinct and flexible, we recommend that the power to make Statutes should be incorporated into the general powers of Council.

3. It is **recommended** that the ANU Act should provide that:

- the governing authority of the University is the Council;
- subject to the Act and the Statutes, the Council may do anything necessary or convenient to be done for, or in connection with, its role as the governing authority of the University; this includes the making of Statutes, provided that such Statutes are not inconsistent with the Act or the PGPA Act;
- the primary responsibilities of the Council include:
 - o appointing the Chancellor;
 - o appointing the Vice-Chancellor and monitoring her or his performance;
 - o setting the University's strategic goals and monitoring progress towards the achievement of those goals;
 - o overseeing academic activities and management effectiveness; and
 - o ensuring responsible financial and risk management and compliance with legislation
- the Council is to act in all matters concerning the University in the way it thinks will best promote the interests of the University.

No form of words regarding the role of Council will ensure good governance if Council takes on what is properly a management responsibility. If Council undertakes management responsibilities in respect of a particular matter, it diminishes its capacity to fulfil its governance role in respect of that matter. The same may be said of a member of Council, a Council Committee or a member of a Council Committee encroaching on management roles. In fact, we found Council members to have a clear understanding of the difference between governance and management. It is essential that management also understands the difference and the importance of keeping the roles distinct.³¹ In paragraph 6, below, we draw attention to ambiguity regarding the Investment Advisory Committee (see paragraph 6.6) and the Campus Planning Committee (paragraph 6.1).

4.2. Balancing institutional autonomy and public accountability

A review of a university's governance arrangements inevitably raises the question of how best to balance institutional autonomy and public accountability. Historically, universities have placed great importance on institutional autonomy, which is connected to another fundamental value, that of academic freedom.³² As one Vice-Chancellor put it:

³¹ For a discussion of the difference in the context of not for profit boards, see Barry S Bader, “[Distinguishing Governance from Management](http://www.greatboards.org/newsletter/reprints/Great-Boards-fall-2008-reprint-distinguishing-governance-and-management.pdf)” <http://www.greatboards.org/newsletter/reprints/Great-Boards-fall-2008-reprint-distinguishing-governance-and-management.pdf> (accessed 26 November, 2014).

³² A small selection of the literature: Alan Gilbert, ‘[Some Heretical Ideas About Universities](http://www.unimelb.edu.au/speeches/transcripts/menzies/20031009-gilbert.pdf)’ <http://www.unimelb.edu.au/speeches/transcripts/menzies/20031009-gilbert.pdf>; ‘[University Autonomy in Europe](http://www.university-autonomy.eu/)’ <http://www.university-autonomy.eu/>; ‘[Academic Freedom and University Autonomy](http://unesdoc.unesco.org/images/0009/000927/092770eo.pdf)’ CEPES Papers on Higher Education <http://unesdoc.unesco.org/images/0009/000927/092770eo.pdf> (all accessed 3 November, 2014).

The ancient principle of institutional autonomy ... remains as important as ever. ... A university needs sufficient autonomy to discharge its long term educational and scholarly responsibilities effectively; to determine its own curricula; to set its own standards of admission, assessment and progression; and to determine who should and should not receive its awards.³³

Universities are, however, the recipients of significant public funding as the analysis in paragraph 2.1 and Appendix G shows. Members of the public would expect the government to hold universities to account for this funding.

We see the question as what one author described as:

how to strike the proper balance between universities and governments, how to strike the proper balance between the autonomy of universities and the reasonable accountability of universities for the public funds that sustain much of their activity.³⁴

We do not favour achieving this balance through micro-regulation of the activities of the University or its Council. Such regulation is inconsistent with the aims of the Government³⁵ and with our view regarding the negative impact of red tape on Australia's productivity.³⁶ Indeed, micro-regulation might encourage a university to abdicate responsibility for its actions.

Our approach to reviewing the ANU Act and the governance arrangements of the ANU has been based on our view that the best outcome will be achieved if ANU's governing body – its Council – is empowered and permitted to govern subject to as few restrictions and limitations as possible. It follows that we do not favour provisions of the kind in the legislation governing Victorian universities which deal with guidelines for university commercial activity.³⁷ It is noted that the New South Wales legislature has recently removed requirements of this kind.³⁸

We have looked carefully at any provision in the ANU Act that limits the University's autonomy.

The autonomy of the kind we favour is more likely to be supported if it is underpinned by a skills-based Council. Accordingly, this Review has been approached on the basis that ANU should have a skills-based governing body of a size and composition that gives confidence to its various stakeholders (including the government, staff, students, alumni and the community generally) that the members have the skills necessary to properly govern the University. Getting this right is the key to support for institutional autonomy.

One provision in the ANU Act that has the potential to limit the University's autonomy is section 44 which provides that the University's power to borrow is subject to limits determined by the Finance Minister. We were advised that this has not been problematic for the University. Nonetheless, removal of the section would be consistent with the principle that, as the

³³ Alan Gilbert, "The Idea of a University Beyond 2000" <https://www.cis.org.au/images/stories/policy-magazine/2000-autumn/2000-17-1-alan-d-gilbert.pdf>

³⁴ Michael Stevenson, "University Governance and Autonomy – Problems in Managing Access, Quality and Accountability" <http://www.sfu.ca/pres/president/speeches/20045.html> (accessed 3 November, 2014).

³⁵ <https://www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation> (accessed 12 November, 2014).

³⁶ Deloitte, Building the Lucky Country #4, "Get out of your own way – Unleashing productivity". <http://www2.deloitte.com/au/en/pages/building-lucky-country/topics/building-lucky-country.html> pages 34 - 39 regarding the cost of administering public sector red tape and pages 42 – 43 regarding regulatory burdens on board members and senior executives (accessed 12 November, 2014).

³⁷ See, for example, Monash University Act 2009 (Vic) sections 52 – 60.

³⁸ [Universities Legislation Amendment \(Regulatory Reforms\) Act 2014](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/b0cf49750b52c610ca257c9f001656cb/$FILE/XN%20Universities.pdf) (NSW)

[http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/b0cf49750b52c610ca257c9f001656cb/\\$FILE/XN%20Universities.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/b0cf49750b52c610ca257c9f001656cb/$FILE/XN%20Universities.pdf)

governing authority of the University, it is the Council that has responsibility for such matters. Provisions similar to section 44 have been repealed in New South Wales.³⁹

4. It is **recommended** that the relevant Australian Government portfolios should consider whether section 44 of the ANU Act, which deals with borrowing limits, is of continuing relevance.

4.3. The Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act)

The ANU is a 'Corporate Commonwealth Entity' under the PGPA Act which replaced the Commonwealth Authorities and Companies Act 1997 (Cth) from the middle of 2014. The ANU Council is an 'accountable authority' for the purpose of the PGPA Act.⁴⁰

The ANU Act provides that certain provisions in the PGPA Act, for example those relating to budget estimates and investments, do not apply to the ANU.⁴¹

4.3.1 PGPA Act and duties imposed on the Council and the University

The PGPA Act imposes duties on the ANU Council as an accountable authority; these are duties:

- to govern
- regarding risk and control
- to encourage cooperation
- in relation to requirements imposed on others
- to keep the responsible Minister and Finance Minister informed.⁴²

Most of these duties are quite consistent with the responsibilities discussed in paragraph 4.1 above, albeit some of the language – for example, the duty in relation to requirements imposed on others⁴³ - would not be as familiar to a university as it would be to other Commonwealth Entities such as government departments.

One duty imposed by the PGPA Act is the duty to keep the responsible Minister and Finance Minister informed. Sub-section 19(1) operates so that the Council must:

- (a) keep the responsible Minister informed of the activities of the entity and any subsidiaries of the entity;
- (b) give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires;
- (c) notify the responsible Minister as soon as practicable after the accountable authority [Council] makes a significant decision in relation to the entity or any of its subsidiaries;
- (d) give the responsible Minister reasonable notice if the accountable authority becomes aware of any significant issue that may affect the entity or any of its subsidiaries;
- (e) notify the responsible Minister as soon as practicable after the accountable authority becomes aware of any significant issue that has affected the entity or any of its subsidiaries.

Whether some of these requirements are as onerous as, on their face, they appear to be, depends on the way they are interpreted. This is particularly so with paragraph 19(1)(a) of the PGPA Act. There is a danger that, if the reach of this paragraph in its application to ANU is not clarified, it will inadvertently be ignored or perhaps there might be 'over compliance'.

³⁹ [Universities Legislation Amendment \(Regulatory Reforms\) Act 2014](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/b0cf49750b52c610ca257c9f001656cb/$FILE/XN%20Universities.pdf) (NSW) [http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/b0cf49750b52c610ca257c9f001656cb/\\$FILE/XN%20Universities.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/0/b0cf49750b52c610ca257c9f001656cb/$FILE/XN%20Universities.pdf) (accessed 14 November, 2014).

⁴⁰ Public Governance, Performance and Accountability Act 2013 (Cth) section 12.

⁴¹ Australian National University Act 1991 (Cth) sub-section 4A(1).

⁴² Public Governance, Performance and Accountability Act 2013 (Cth) sections 15 – 19.

⁴³ Public Governance, Performance and Accountability Act 2013 (Cth) section 18.

Sub-section 4A(2) of the ANU Act provides that nothing in section 19 of the PGPA Act requires members of Council

to do anything that will or might affect the academic independence or integrity of the University.

While this is a commendable attempt to reflect the nature of a university, there are many activities of the ANU that remain subject to section 19 of the PGPA Act.

Sub-section 19(3) of the PGPA Act provides that rules⁴⁴ may prescribe matters to be taken into account in deciding whether a decision or issue is significant. This could be used to limit the reach of paragraphs (c), (d) and (e), or at least clarify their operation.

We understand that the University is in discussion with the Department of Finance regarding the Framework for compliance with the requirements imposed on the ANU as a Corporate Commonwealth Entity to have a corporate plan and to prepare annual performance statements.⁴⁵

We consider it to be important that the application of these sections to the ANU should be clarified. It is not unlikely that a higher level of accountability might be required pursuant to paragraph 19(1)(b) of the PGPA Act regarding the NIG (see paragraph 3 above and, in particular, recommendation 2) than that required more generally of the ANU.

5 It is **recommended** that the reach and application of the PGPA Act to the ANU should be clarified.

4.3.2 PGPA Act and Council members

Members of Council, and all members of staff of the ANU, are 'officials' for the purposes of the PGPA Act. Sections 25 - 29 of the PGPA Act set out the duties of officials. These are duties:

- of care and diligence;
- to act in good faith and for a proper purpose;
- not to misuse her or his position;
- not to misuse information;
- to disclose material personal interests that relate to the affairs of the university.

An official may be removed from her or his position if they breach these duties.

The application of these principles to non-ex officio members of Council is made clear in sub-section 13(4), paragraph 15(1)(k) and sub-section 15(1A) of the ANU Act: breach of a duty imposed by the PGPA Act is a ground for Council declaring the Council member's office vacant. This does not encompass the ex-officio members of Council – the Chancellor and the Vice-Chancellor. Recommendations are made regarding this in paragraphs 8.3 and 8.4.

4.4 Approval of degree and other award programs

See Better Practice University Governance Assessment Framework (Appendix C to this Report) paras 2.2 and 2.3.

Discussions with Council members and staff at ANU revealed that there is a lack of understanding regarding the approval of the University's degree and other award programs:

- First, who is responsible for formally approving these programs? Some people advised us that this is Council's responsibility and others that the Academic Board has this

⁴⁴ 'Rules' here refers to rules made by the government, not the University's rules.

⁴⁵ Public Governance, Performance and Accountability Act 2013 (Cth) sections 35 - 39.

power. The latter view is supported by the *Australian National University Academic Board Statute 2013* which describes the Academic Board's functions as including "accrediting and reaccrediting programs and changes to existing programs" and "approving Degrees and other awards".

- Secondly, who is responsible for ensuring that offering such a program, or continuing to offer it, is appropriate from a business perspective? This includes a consideration of the fees to be charged to international students and postgraduate students and, if the 2014 Budget proposals are enacted, fees for undergraduate domestic students. Our reference to a 'business perspective' should not be taken to suggest that we envisage that all programs must be revenue positive. Universities do offer some programs that support their strategic intent or mission even though they make a loss on those particular programs. A decision to offer such a program in these circumstances should be made knowingly and based on an understanding of the implications for other programs that will be required to subsidise it.

It is important to emphasise that there are two, different sets of issues to be considered regarding the approval of degree and other award programs – academic issues and business, or commercial, issues. An Academic Board is an appropriate body to consider the academic merits of a program and Academic Boards are often given delegated authority to approve new courses and changes to existing courses. Consideration of the academic and commercial aspects of the approval of programs should, however, be kept separate; indeed, the *Threshold Standards of the Higher Education Standards Framework* require a "clear and discernible separation between corporate and academic governance".⁴⁶ It is in relation to the commercial aspects that we found considerable uncertainty at the ANU.

Many people, including Council members and members of staff, were unable to say who is responsible for assessing the business or commercial aspects of degree and other award programs.

In fact, at the ANU, formally, it is the Vice-Chancellor or a Deputy Vice-Chancellor who makes Orders determining fees,⁴⁷ but this is the formal authority.

The Vice-Chancellor advised us that each College considers whether a degree or other award program should be offered on business grounds. Where fees are to be charged, they are noted by the Senior Management Group.

We assume that the College considers matters such as – do we have the staff, facilities and infrastructure necessary to offer this program? is there sufficient student demand? will this be revenue positive or is this program of such strategic importance to fulfilling ANU's purpose that other programs should subsidise it?

Leaving these matters to the Colleges, rather than a central management committee, raises the following questions:

- offering a teaching program involves costs to central University services (the cost of marketing and student support are obvious examples) and has implications for the University's budget, not just the budget of the relevant College; are costs to the University's central services being properly taken into account by the Colleges when determining whether to offer, or continue to offer, a degree or other award program?
- expertise regarding the assessment of student demand and load planning is usually located at the centre of a University rather than being replicated in each College; is

⁴⁶ See Higher Education Standards Framework (Threshold Standards) 2011, para 3.7.

⁴⁷ [Fees Statute 2006, section 4](http://about.anu.edu.au/_documents/statutes/feesstatute.pdf) http://about.anu.edu.au/_documents/statutes/feesstatute.pdf (accessed 5 November, 2014) and [Tuition Fees Order](http://about.anu.edu.au/_documents/orders/tuitionfeesorder.pdf) http://about.anu.edu.au/_documents/orders/tuitionfeesorder.pdf (accessed 5 November, 2014).

student demand being properly assessed by the Colleges? and does the current approach facilitate university load planning?

- it is possible that offering program A may adversely affect demand for program B offered by a different College; is the College that is developing a new program properly equipped to assess the impact of offering the new program on programs offered by other Colleges?
- is a decision to offer a program that is to be subsidised by revenue from other programs one that should be made by a College?
- given the potential budget implications of offering a particular program, should a central management committee provide final approval for offering that program?

In the more competitive, market-driven environment in which universities now operate, it is important that Council members and University staff understand the processes by reference to which degree and other award programs are approved and kept under review by the Academic Board (from an academic perspective), and by the relevant College (from a business or commercial perspective).

Given that whether to offer a degree or other award program is a key strategic decision, the Council should consider and approve the high level principles applied to determine whether to offer degree or other award programs and the high level principles to be applied to set the fees to be charged for degree or other award programs, where relevant. Council should also consider high level policy questions such as whether ANU should offer sub-degree level qualifications. When the high level principles have been approved by Council, the management of the University will be able to assess whether those principles that relate to what we have described as 'business or commercial' matters would best be applied by the Colleges or a central management committee.

- 5 It is **recommended** that ANU clarifies and makes known who is responsible for considering and formally approving degree and other award programs (i) on academic and (ii) on business grounds, including the review of existing programs, and that the Council considers and approves the high level principles to be applied to determine whether to offer such a program (this would include considering high level policy issues such as whether the University should offer sub-degree level qualifications) and the high level principles regarding the fees to be charged, where relevant.

5. The size and composition of Council membership – ensuring members’ skills and knowledge are diverse, reflecting a contemporary governance and management approach

See Better Practice University Governance Assessment Framework (Appendix C to this Report) para 2.1.2 and 2.1.3.

5.1. The current position

Sub-section 10(1) of the ANU Act provides for a Council made up of:

- (a) the Chancellor;
- (c) the Vice Chancellor;
- (k) one person who is either a dean or the head of a research school and is elected, in either case, by the deans and the heads of the research schools voting together;
- (l) one member of the academic staff of the Institute of Advanced Studies elected by members of that staff;
- (m) one member of the academic staff of The Faculties elected by members of that staff;
- (n) one member of the general staff of the University elected by members of that staff;
- (o) one postgraduate student of the University elected by the postgraduate students of the University;
- (p) one undergraduate student of the University elected by the undergraduate students of the University;
- (q) 7 members appointed by the Minister on the recommendation of the Nominations Committee of Council.

Accordingly, there are currently fifteen members of Council:

- two are *ex officio* (Chancellor and Vice-Chancellor)
- six are staff or students (three academic staff, one general staff member, one postgraduate student, one undergraduate student)
- seven are appointed by the Minister on the recommendation of the Nominations Committee;

of these:

- eight (the Chancellor and the seven appointed members) are external to the University in the sense that they are not employees or students
- seven are internal (the Vice-Chancellor, the four staff and two students).

The overriding question is – is this the optimal size and composition for ANU's governing body? This involves asking: does it ensure that the Council can fulfil its responsibilities (discussed in paragraph 4 above)? collectively, does Council have the skill sets identified in paragraph 2.1.2.3 of the **Better Practice University Governance Assessment Framework**? would the stakeholders identified in paragraph 2.1 above – ANU's staff, students and graduates, the

Australian Government and, of course, Council itself – have confidence that the Council is of the optimal size and composition?

Before addressing this, we make some observations.

5.1.1. Some membership categories no longer reflect the ANU's organisational structure

Paragraphs 10(1)(k)-(m) no longer reflect the organisational structure of the University. The academic units of the University now consist of a series of Colleges which are made up of Schools, Research Schools and Centres.⁴⁸ Although the University has done what it can to regularise this,⁴⁹ it does illustrate the importance of the legislation allowing for the fact that the University may change its structures.

5.1.2. Student members are not elected or appointed *ad personam*

As paragraph 2.1.2.1 of the **Better Practice University Governance Assessment Framework** suggests, better practice is for all Council members, other than the Chancellor, the Vice-Chancellor and the Chair of the Academic Board, to be appointed or elected *ad personam*, that is, on an individual basis rather than by virtue of an office he or she may hold.⁵⁰

Under current arrangements, the student members of the ANU Council are not elected or appointed to Council *ad personam*; the student members are the elected heads of ANU's undergraduate and postgraduate student associations. We were advised that:

The Nelson reforms required that students elect their representatives to Council – that the appointment not be *ex officio*. ... [T]he University approached the two student bodies ... to discuss how they wanted to manage the election of student representatives. ... There was a view expressed by the student bodies that the persons elected as president of the respective student bodies are appropriate to be the elected representative of the respective student constituencies on the University Council. Accordingly, the student bodies proposed amendments to their constitutions to provide that the person elected as president is also to be the elected student representative on the University Council. Those amendments were taken to the relevant annual general meetings of the two associations and were overwhelmingly endorsed by the student membership. The University Council respected the views of the students and has accepted that the persons elected as president of those bodies meet the requirements of the Act for elected representatives on Council.⁵¹

This argument is unconvincing. The fact that the student associations, not unsurprisingly, considered that their presidents were appropriate to be the elected members, does not mean that the presidents are, in fact, elected *ad personam* as members of Council. Nor can an amendment to the constitution of a student association, even if endorsed at one time by the members of that association, alter the fact that students have not been given an opportunity to elect a person as a Council member who is not also the president of the student association.

In paragraph 5.2 below we return to problems arising from the fact that the student members of the ANU Council are not elected *ad personam*, but are the heads of ANU's undergraduate and postgraduate student associations.

⁴⁸ <http://about.anu.edu.au/documents/ovc-anu-college-org-chart-03.pdf> (accessed 6 November, 2014).

⁴⁹ See Section 6 of the [Membership of the Council Statute 2010](#).

<http://about.anu.edu.au/documents/statutes/mshipcouncilstatute.pdf> and the [Membership of the Council \(Heads of Faculties and Schools\) Rules 2014](#) <http://about.anu.edu.au/documents/rules/mshipcouncilheadsrules.pdf> (accessed 6 November, 2014).

⁵⁰ This was a requirement of Protocol 3 of the National Governance Protocols – see Colin Walters, 'University Governance' <http://www.oecd.org/edu/imhe/37378292.pdf>; see also [Voluntary Code of Best Practice for the Governance of Australian Universities](#) para 3 <https://www.universitiesaustralia.edu.au/efficiency-and-governance/legislation-and-governance/University-Governance/University-Governance> (accessed 6 November, 2014).

⁵¹ Memorandum dated 9 October, 2014 prepared by the University Counsel.

5.1.3. The Academic Board

Most Australian universities include the Chair (however designated) of the Academic Board as an *ex officio* member of Council. This is not the case at ANU where the Chair of the Academic Board attends Council meetings as an observer.

The history of the Academic Board at ANU is described in paragraph 6.2 below. It is explained that ANU's Academic Board has been in place only for a relatively short period of time.

5.2. Staff and student Council members

Ralph and Cameron identify the failings of 'representational boards', including: lack of critical skills and experience; tension between directors' obligations to the company and their commitments to their constituency; poor group dynamics.⁵² Some observations were made in the course of our consultations regarding the lack of experience of student members and some staff members. Less frequently, mention was made of a divide between the staff and student members and the external members. It was also suggested that, on some significant issues, the appointed members have found it difficult to have their views accorded weight because of a sense that the other Council members 'know best' or have already worked through the issues.

We found that past and present staff and student Council members understood the difference between a representative and a fiduciary role.

The fact that student members of the ANU Council are not currently elected as Council members *ad personam*, but are the elected presidents of the undergraduate and postgraduate student bodies (see paragraph 5.1.2 above), means that students usually serve as Council members for only one year. The shortness of their tenure as Council members might be thought to make it difficult for students to gain the understanding and confidence necessary to meaningfully contribute to Council fulfilling its responsibilities. It is, however, important to note that we found the current and past student members with whom we spoke to be confident, articulate and well-informed.

Under the current arrangements:

- a student cannot opt to be either president of a student association or a Council member – he or she must undertake both roles at the same time; this must make for a heavy workload
- a student cannot stand for election as a Council member after completing her or his role as president of one of the student associations; having completed the student association role might provide a good background for the Council role
- voters are not given the option of voting for different people to take on the two roles of president of the student association and Council member.

Ralph and Cameron identify the strengths of 'representational boards': where directors are personally committed they are enthusiastic and committed contributors; having directors who are respected within their constituencies can provide credibility and ownership amongst stakeholders and such directors should be more likely to be able to predict whether management strategies and proposals will be acceptable to stakeholders.⁵³

Many Council members said that the student members were able to provide valuable information and insight regarding the way students viewed particular proposals. We would observe that this places a heavy burden on student members to reflect the views of ANU's diverse student body. Similar comments were made, although less frequently, regarding the value of staff Council members providing information to Council about the views of their

⁵² L Ralph and A Cameron, "The challenge of the 'representational board'" *Company Director* June 2006 <http://cameronralph.com.au/Downloaded%20documents/The%20Challenge%20of%20the%20Representative%20Board.pdf> (accessed 16 October, 2014).

⁵³ Ibid.

colleagues. One former student Council member referred to the conduit operating in the opposite direction, that is, in terms of staff and student members of Council being able to explain Council's position to other staff and students.

The fact that ANU's Council includes staff and student members appears to give their constituencies confidence that the Council is aware of their views. Again, this may place an unrealistic burden on staff and student Council members.

We were advised that, in the most recent elections, voter 'turn out' was as follows:

Council Membership Category	Constituency Size	Voter Turn Out
Section 10(1)(k) (Dean or Head of Research School)	32	17 (53%)
Section 10(1)(l) (academic staff member)	1,689	221 (13%)
Section 10(1)(m) (academic staff member)	1,689	345 (20%)
Section 10(1)(n) (general staff member)	2,275	332 (15%)

So far as elections for the student presidents are concerned, the figures were:

Council Membership Category	Constituency Size	Voter Turn Out
Section 10(1)(o) (postgraduate student)	10,840	883 (8%)
Section 10(1)(p) (undergraduate student)	10,113	2,123 (21%)

The fact that relatively few of those eligible to vote did so should not be taken to mean that staff and students would be ambivalent if these categories of Council membership were removed.

In our consultations with current and former Council members, no one expressed strong opposition to there being staff and student Council members. Several people (including, but not only, staff and student members) expressed strong support. A number of people did, however, express the view that it is not necessary to have as many as four staff members.

The position in Victoria is instructive. Part 6 of the Education Legislation Amendment (Governance) Act 2012 (Vic) changed the legislation establishing Victorian universities to remove categories of membership for elected student and staff members (the Vice-Chancellor and the Chair of the Academic Board remain *ex officio* members). Some Victorian universities have embraced this change. For example, Swinburne University of Technology now has a Council of eleven members - four are government appointed (three by the Governor-in-Council and one by the relevant Victorian Minister); four are appointed by the Council; the Chancellor,

Vice-Chancellor and Chair of the Academic Board (or 'Senate' as it is titled at Swinburne) are *ex officio* members.⁵⁴ Thus, with the exception of the Vice-Chancellor and the Chair of the Academic Senate, the Council includes no staff members; there are no student members. The reason for drawing attention in particular to the position at Swinburne is that these arrangements are accompanied by a very well-developed *Governance Framework* that includes principles regarding the Council being appraised of staff perspectives and regarding student consultation and representation within the wider University deliberative and decision-making processes.⁵⁵

The Councils of some Victorian Universities wished to retain students and staff Council members. For example, Monash University's Council (a Council of 15) has currently allocated one of its six Council appointed positions to a current student and one to a current member of staff.⁵⁶ It has developed quite a detailed process for identifying and appointing the staff and student members *ad personam*.⁵⁷

When the Victorian legislation was changed, the Chancellor of the University of Melbourne was quoted as saying that "the removal of... [staff and student] representatives was likely to disrupt the relationship of council to the university as a whole and would inevitably cause resentment at both staff and student levels".⁵⁸ The University of Melbourne (which has a Council of 15) has established three staff and two student 'Council Fellows' who are not Council members, but who "have the same rights as Council members, and will be treated by the University in the same way as Council members, except for voting rights at Council meetings."⁵⁹

The responses of Swinburne, Monash and Melbourne University illustrate the fact that there is a diversity of views regarding whether there should be student and staff Council members and, if so, how many.

We are not persuaded that having staff and student members of Council is the best way to ensure that Council is aware of the views of staff and students. Reliance on staff and student members may lead Council to fail to address the inadequacy of management consultation on matters in respect of which it would be appropriate to consult (see also section 10 and recommendation 29). Nor do we see it as necessary for staff and students to be the conduits back to their constituencies regarding what happened at Council – this should be done by way of report (see paragraph 8.2 and recommendation 19). Nonetheless, when there is a long history of staff and student membership of Council, as there is at ANU (the 1946 Act allowed for two students and three staff members in a Council of not more than 30 members), removing these members may cause staff and students, who are important stakeholders (see paragraph 2.1 above), to lose confidence in the Council.

5.3. Appointed members

Paragraph 10(1)(q) of the ANU Act 1991 provides that Council's Nominations Committee (see paragraph 4.6 below) recommends to the Minister the appointment of the seven external members of Council. Sub-sections 10(3) - (6) provide that:

- the Nominations Committee must have regard to the desirability of ensuring that there is a balance of skills, expertise and gender among members of the Council.

⁵⁴ <http://www.swinburne.edu.au/corporate/registrar/council/memberships.html> (accessed 29 October, 2014).

⁵⁵ <http://www.swinburne.edu.au/policies/governance/index.html#student>, particularly paras 7 and 8 (accessed 29 October, 2014).

⁵⁶ <http://www.adm.monash.edu.au/execs/council/members.html> (accessed 29 October, 2014).

⁵⁷ <http://www.adm.monash.edu.au/execs/council/eoi-information-pack.pdf> (accessed 29 October 2014).

⁵⁸ <http://www.theage.com.au/national/education/students-staff-campaign-against-council-changes-20121107-28xa2.html> (accessed 29 October, 2014).

⁵⁹ See Standing Resolutions 1.1.9(b), (c) and (d); these Standing Resolutions cannot be rescinded or varied without a special resolution of the Council passed by a three quarters majority of those Council members present and voting (Standing Resolution 1.1.9(e)) <http://www.unimelb.edu.au/unisec/Srvol1/sr11.html#r9> (accessed 29 October, 2014).

- at least 2 of the appointed members must have a high level of relevant financial expertise and at least one member must have a high level of relevant commercial expertise.
- the Nominations Committee must not recommend a person who is:
 - o a current member of:
 - the Commonwealth Parliament; or
 - a State Parliament; or
 - the legislature of a Territory; or
 - o a current member of the academic or general staff of the University; or
 - o a student of the University; or
 - o a member of the Nominations Committee.

Council Guidelines for the Nominations Committee currently simply reiterate the various requirements regarding the external members as specified in section 10 of the Act, adding a requirement that members appointed to Council “must have an appreciation of the values of the University and its core activities of teaching and research, its independence and academic freedom, and the capacity to appreciate what the University’s external community needs from it”.⁶⁰

Sub-section 10(7) requires that the Minister must, within 60 days after receiving written advice from the Nominations Committee recommending that a person be appointed to the Council:

- (a) appoint the person to the Council for a period not exceeding 4 years; or
- (b) decide not to appoint the person “if, in the Minister’s opinion, the appointment is not in the best interests of the University”.

If the Minister decides not to appoint a person, sub-section 10(8) provides that the Minister must:

- (a) notify the Council, in writing, of the refusal; and
- (b) give reasons for the refusal.

In deciding not to appoint a person, the Minister must “only consider the balance of skills, expertise and gender, and the periods of appointment (or proposed periods of appointment) of proposed and continuing members of the Council” (sub-section 10(9)).

These provisions place both nominees and the Minister in an invidious position. The Minister is required to accept or reject a nomination. While sub-section 10(9) limits the matters that the Minister may take into account, paragraph 10(7)(b) refers to the Minister being of the opinion that “the appointment is not in the best interests of the University”. Even if the drafting of paragraph 10(7)(b) were improved, almost inevitably any decision not to appoint the person specified will be the subject of speculation and both the rejection, and the speculation, embarrassing to the person recommended. Furthermore, it is possible that there could be legitimate reasons for not appointing a person which lie outside the limited reasons specified in sub-section 10(9). For example, it may be that the Minister knows that the person has a conflict of interest or the person may be charged with a serious criminal offence after the Nominations Committee makes its recommendation or, unknown to the Nominations Committee, the person may be of bad character.

The current arrangements do not permit the Minister to consider the relative skills and capacity to contribute of more than one potential Council member; the Minister can consider only the single person recommended by the Nominations Committee.

The legislation regarding other Australian universities does not limit Ministerial discretion in the way that the ANU Act does. For example, the New South Wales legislation setting out the “standard governing body provisions” provides that the governing body may suggest to the

⁶⁰ Council Guidelines – Nominations Committee of Council (provided by Ms Kate Molloy, Director, Corporate Governance and Risk Office 27 October, 2014).

Minister persons who the governing body considers would be appropriate for appointment by the Minister, but it provides that this does not limit the discretion of the Minister.⁶¹

5.4. Size of the Council

Most people with whom we consulted thought that fifteen members was 'about right'; some people suggested that the Council could be smaller. As previously noted, several people opined that it was not necessary to have as many as four staff members. The comments regarding a smaller Council are consistent with a report on *Global Trends in University Governance* written in 2008, in which the author concluded:

there has been a general trend in favor of a managerial model with a smaller number of members and a majority of external non-academic (lay) people.⁶²

5.5. Conclusions regarding Council membership

5.5.1. Overview

Taking into account paragraph 2.1.2 of the **Better Practice University Governance Assessment Framework**, the analysis and commentary in paragraphs 5.1 – 5.4 above and our general principle that the University should be given flexibility to respond to changed circumstances, we recommend that the ANU Act should provide for a Council consisting of —

- two official members - the Chancellor and Vice-Chancellor;
- at least three and up to six members, at least one of whom must be external to the University, appointed by the Council (any staff or student members must be appointed or elected *ad personam* with the exception of the Chair of the Academic Board who may be appointed by virtue of her or his office);
- at least three and up to six external members appointed by the Minister, provided that the number of members appointed by the Minister must be equal to or greater than the number of Council appointed members.

The legislation would require the Nominations Committee, the Council and the Minister to have regard to the desirability of ensuring that:

- there is a balance of skills, expertise and gender among members of the Council;
- regard is had to the skills necessary to ensure that the Council can fulfil its responsibilities under the legislation; and
- Council members have an appreciation of the purposes of the University, its independence and academic freedom, and the capacity to appreciate the national role of the University and what the University's external community needs from it.

The legislation would also require that at least two of the Council members must have a high level of relevant financial expertise and at least one member must have a high level of relevant commercial expertise.

⁶¹ Universities Governing Bodies Act 2011 (NSW) Schedule 1, Clause 8.

⁶² John Fielden, '[Global Trends in University Governance](http://www-wds.worldbank.org/external/default/WDSP/IB/2008/06/18/000334955_20080618052349/Rendered/PDF/442440NWP0BOX311webversion01PUBLIC1.pdf)' The World Bank 2008, page 37 http://www-wds.worldbank.org/external/default/WDSP/IB/2008/06/18/000334955_20080618052349/Rendered/PDF/442440NWP0BOX311webversion01PUBLIC1.pdf (accessed 8 November, 2014). See also William Saint, '[Guiding Universities: Governance and Management Arrangements around the Globe](http://www.hdnw.org/EXTHD/Office/Resource/5485726-1239047988859/University-Governance-and-Management-FINAL-Revised-2-Feb-2010.pdf)' Human Development Network World Bank, 2009 <http://siteresources.worldbank.org/EXTHD/Office/Resource/5485726-1239047988859/University-Governance-and-Management-FINAL-Revised-2-Feb-2010.pdf> (accessed 8 November, 2014).

5.5.2. Size of Council and some characteristics

Under our proposal, the Council could be as small as eight or as large fourteen. Within these limits, the size would be determined by the Council and specified in a Rule which would be notified to the Minister. It would be possible to change the size of Council from time to time (within the eight to fourteen parameters and provided that the number of Ministerial appointments is equal to or greater than the number of Council appointments). Council should keep both the size of Council and the Council appointed membership categories under review.

There would be a majority of external members: if there were eight members, at least five would be external members (the Chancellor, the minimum of one external member appointed by the Council and the three external members appointed by the Minister); if there were fourteen members, at least eight would be external members (the Chancellor, the minimum of one external member appointed by the Council and the six external members appointed by the Minister). This involves a slight change in balance. Under the current Act there is one more external member than the number of internal members; the new arrangements would result in a minimum of two more external members than internal members. This is to ensure that the external members appointed by the Minister (maximum of six) and by the Council (minimum of one) are at least equal in number to the *ex officio* (two) and potentially internal Council appointed members (potentially a maximum of five).

Unlike the usual position set out in paragraph 2.1.2.1 of the **Better Practice University Governance Assessment Framework**, the Chair of the Academic Board is not specified as an *ex officio* member. ANU has not always had an Academic Board; we do not want to lock this structure in to the legislation. Furthermore, the Academic Board is still finding its place in the University governance framework; we consider it better to provide flexibility regarding if, and when, the Chair becomes a member of Council. Accordingly, we have provided that the Chair of the Academic Board may be appointed, by virtue of her or his office, as a Council appointed member. This maximises the flexibility for the Council.

5.5.3. Council appointed members

The Council would specify in a Rule⁶³ the categories of persons to be appointed as Council members and how many there are to be in each category. One such category would be that of the external member appointed by Council; Council could decide that more than one such person is to be appointed by Council. The Nominations Committee would make recommendations to Council regarding who should be appointed as the external Council appointed member(s).

Council would specify in a Rule the other categories (if any) of Council appointed members. We **suggest** that consideration should be given to making the Chair of the Academic Board one of the Council appointed members and, as previously explained, that person could be appointed by virtue of her or his office. Council might wish to specify staff or student categories; if so, it would also specify how many members are in those categories and whether the staff and students are to be appointed as Council members *ad personam* (and if so, the process by which they would be appointed) or elected as Council members *ad personam* (and, if so, the process by which they would be elected). The appointment or election process as a Council member must be authentic.

5.5.4. Members appointed by the Minister

Council would specify in a Rule the number of Council members to be appointed by the Minister (noting that the number of members appointed by the Minister must be equal to or greater than the number of Council appointed members). As soon as Council was aware that a vacancy would arise, it would be required to advise the Minister. The Nominations Committee would be

⁶³ See the current "[Membership of the Council Rules 2013](http://www.comlaw.gov.au/Details/F2013L01477)" <http://www.comlaw.gov.au/Details/F2013L01477> (accessed 4 December, 2014).

required to put forward the names of people who the Committee considers would be appropriate for appointment by the Minister, specifying the reasons for the suggestion. The Committee would be required to put forward at least one more name than the number of vacancies (so, for example, if there were one vacancy, at least two suggestions would have to be put forward; if there were two vacancies, the Committee would be required to put forward at least three names).

The Minister would be required to consider the Nominations Committee's suggestions, but would not be bound to appoint one of those suggested. The Minister would be required to give reasons for the appointment of a particular person.

5.5.5. Council decision-making regarding the size of Council and Council appointed members

The recommendations made in this section provide Council with flexibility and discretion regarding the size of Council and the categories of members appointed by Council. Council members should think carefully about these matters. There will be a temptation to simply make the current membership 'fit' the new framework. This would be a lost opportunity to determine whether this membership really is the best possible in the interests of ANU. The first decisions that are made will be the most significant.

5.5.6. Tenure; transitional arrangements; vacancies

Council appointed members and members appointed by the Minister would be appointed for a period not exceeding four years; they could be renewed by following the same process as that outlined above for new members. Unless the Council, in the case of Council appointed members, or the Minister, in the case of members appointed by the Minister, determines otherwise in respect of a particular member, Council appointed members and members appointed by the Minister would not be permitted to hold office for more than eight years. Extending an appointment beyond eight years would be unusual; under normal circumstances, it should be possible to balance the interests of continuity and renewal by some members serving one term and others serving two terms.

It should be possible to make transitional arrangements regarding current Council members.

If a Council member resigns part-way through her or his term of appointment, the vacancy should be dealt with as a new appointment rather than as a person filling a casual vacancy.

5.6. Remuneration

Council members (other than the Chancellor, who is given a modest honorarium) do not currently receive any remuneration. Council discussed this in 2012, resolving against paying Council members. We were advised that, since then, no one has expressed a wish to re-open the question. Notwithstanding this, we do recommend that Council members, other than members of staff, should be paid.

Making even a modest payment to Council members is a way of publicly recognising the seriousness of governance responsibilities.

The level of remuneration would be determined on the advice of the Remuneration Tribunal.⁶⁴

Given the time commitment expected of a member of Council, Council should set a figure for time-release from their usual duties for any staff members.

⁶⁴ See <http://www.remtribunal.gov.au/offices/part-time-offices/part-time-office-background> (accessed 8 November 2014).

5.7. Recommendations based on the analysis in paragraphs 5.1 – 5.6 above

7. It is **recommended** that:

- the ANU Council should be constituted as follows:
 - o two official members - the Chancellor and Vice-Chancellor.
 - o at least three and up to six members appointed by the Council – the number to be determined by Council and specified in a Rule. At least one of the Council appointed members must be external to the University, that is, not a current member of staff or student. The Nominations Committee would make recommendations to Council regarding who should be the external Council appointed member(s). If Council were to decide that there should be staff or student members, they must be appointed or elected *ad personam* with the exception of the Chair of the Academic Board who may be appointed by virtue of her or his office.
 - o at least three and up to six external members appointed by the Minister. The number of members appointed by the Minister would be determined by Council and specified in a Rule, but the number must be equal to or greater than the number of Council appointed members. The Nominations Committee would be required to put forward the names of people who the Committee considers would be appropriate for appointment (or re-appointment) by the Minister, specifying the reasons for the suggestion. The Nominations Committee would be required to put forward at least one more name than the number of vacancies. The Minister would be required to consider the Nominations Committee's suggestions, but would not be bound to appoint one of those suggested. The Minister would be required to give reasons for the appointment of a particular person.
- the Nominations Committee, the Council and the Minister should be required to have regard to the desirability of ensuring that:
 - there is a balance of skills, expertise and gender among members of the Council;
 - regard is had to the skills necessary to ensure that the Council can fulfil its responsibilities under the legislation; and
 - Council members have an appreciation of the purposes of the University, its independence and academic freedom, and the capacity to appreciate the national role of the University and what the University's external community needs from it.
- at least two of the Council members would be required to have a high level of relevant financial expertise and at least one member would be required to have a high level of relevant commercial expertise.
- Council appointed members and members appointed by the Minister should be appointed for a period not exceeding four years; they could be renewed, but unless the Council, in the case of Council appointed members, or the Minister, in the case of members appointed by the Minister, determines otherwise in respect of a particular member, Council appointed members and members appointed by the Minister would not be permitted to hold office for more than eight years.
- Council members, other than members of staff, should be paid and time-release from their usual duties should be authorised for staff members.

6. Council Committees

See Better Practice University Governance Assessment Framework (Appendix C to this Report) para 2.1.4.

Sub-section 18(1) of the ANU Act authorises Council to delegate its functions and powers (except its powers in relation to the making of statutes) to members of a committee consisting of members of Council or members of Council and others. There are matters that cannot be delegated such as appointing the Chancellor, Pro Chancellor and Vice-Chancellor (sub-section 18(4)).

Council committees give detailed governance level consideration to particular matters within their terms of reference. The fact that membership of some committees may be extended to people who are not Council members allows the Council to access the expertise of those with particular knowledge and skills focused on a particular area.

6.1 Overview – gaps and terms of reference

Currently the ANU's Council Committees are:

- Audit and Risk Management Committee
- Committee on Conditions and Appointment of the Vice-Chancellor
- Emergency Appointment (Vice-Chancellor) Committee
- Finance Committee
- Nominations Committee of Council
- Honorary Degrees Committee

The main gap in this list is a Remuneration Committee (see paragraphs 6.4 and 6.5 below).

We recommend that Council consider establishing a *Campus Planning Committee* charged with providing advice to Council on the development and periodic review of Master Plans for the University's Campus. Given that the site occupied by the ANU was provided for in Walter Burley Griffin's design for Canberra, the local community and Council no doubt accord weight to campus master planning. Furthermore, in the more competitive, market driven environment now facing Australian universities, many of them are seeing their campuses as a strategic resource to be developed in a way that makes them more attractive to the staff and students for whom they compete. We consider it appropriate for Council to have governance oversight of this and that the particular expertise is unlikely to reside in Council members. Council might consider broadening the terms of reference of the Committee to include advising Council on the design and implementation of major infrastructure projects and/or the naming of buildings in which case the committee might be established as a *Buildings and Estates Committee*.

The Minutes of a recent Council meeting refer to a proposed review of "the University's Campus Planning and Development Committee", but this Committee does not appear to be listed on the website as a University Committee or as a Council Committee.⁶⁵ We were advised that there was a Council Committee in the past, but its role has been taken over by management and that matters related to campus planning are being worked through by the Executive Director (Administration and Planning). We are of the view that campus planning is not only a management issue, but also a governance matter. It is worth noting that the Council of another Australian University considers these matters to be of such governance significance that it has a Buildings and Estates Committee with no fewer than three sub-committees (dealing with Heritage, Landscape and Building Design);⁶⁶ the Committee and its sub-committees draw on wide expertise.

We have been advised that Council has resolved to establish an *Assets Naming Committee*. We recommend that Council should consider the relationship between this new Committee and

⁶⁵ <http://about.anu.edu.au/governance-structure/committees> (accessed 9 November, 2014).

⁶⁶ <http://www.unimelb.edu.au/unisec/committees/member.html> (accessed 9 November, 2014).

our suggested *Campus Planning Committee* or *Buildings and Estates Committee*; it is possible that one committee could cover all of these matters.

We noted that the terms of reference of each Council Committee are formatted differently. In some cases, the terms of reference are embedded in committee charters (as is the case with the Audit and Risk Management Committee⁶⁷) or in documents dealing not only with terms of reference, but also operating procedures (as is the case with the Finance Committee⁶⁸). We do not suggest that the charter and operating procedures are not appropriate, just that the terms of reference should be free standing and drafted in a consistent manner.

In the interests of promoting confidence in the members of each Committee, we recommend that short biographies of each member should be published on the web site.

We recommend that each Committee should be required to develop an annual schedule of business that links the Committee's terms of reference to matters to be addressed at each meeting.⁶⁹ The schedule should be submitted to Council for its approval at the last Council meeting of the preceding year. This would ensure that Council has proper oversight of its Committees and it would also facilitate an annual self-evaluation of the Committee's performance against its terms of reference (it would seem that currently the self-reviews are undertaken only every two years). The self-evaluation should be reported to Council at the same time as the schedule for the next year is submitted to Council for its approval.

8. It is **recommended** that Council consider establishing a *Campus Planning Committee* being a Council Committee charged with providing advice to Council on the development and periodic review of master plans for the University's Campus or, if its terms of reference were to extend to advising Council on the design and implementation of major infrastructure projects and/or the naming of buildings, Council might consider establishing it as a *Buildings and Estates Committee*.
9. It is **recommended** that, in the case of Council committees:
 - each committee's terms of reference should be easily located and formatted consistently
 - short biographies of each committee member should be published on the web site
 - an annual schedule of business should be developed that links the committee's terms of reference to a schedule of matters to be addressed at the various committee meetings scheduled for that year
 - Council should consider annual reports from each Committee evaluating its effectiveness against its schedule of business and terms of reference.

6.2 Academic Board

The academic governance arrangements at ANU have changed several times in recent years. Before 2001, academic governance was the responsibility of two boards – the Board of the Institute of Advanced Studies and the Board of the Faculties - which reflected the then organisational structure of the University. In 2001, a single Academic Board was established; in 2006 policy sub-committees were established. In 2010 ANU's Academic Board was disestablished and its responsibilities assigned to the policy sub-committees with provision for the sub-committees to meet as a joint committee to advise the Vice-Chancellor on major issues of University-wide strategy or significance.⁷⁰ In 2012 the Academic Board was re-established.

⁶⁷ http://about.anu.edu.au/documents/committees/armc_charter.pdf (accessed 21 October 2014).

⁶⁸ <http://about.anu.edu.au/documents/committees/financecommittee/termsofreference.pdf> (accessed 21 October 2014).

⁶⁹ See, for example, <https://sharepoint.deakin.edu.au/sites/Governance/Business%20schedules/arc-business-schedule.pdf> (accessed 11 November, 2014).

⁷⁰ Information provided by Ms Kate Molloy, Director, Corporate Governance and Risk Office via email on 10 October, 2014.

The frequency of changes affecting the academic governance arrangements at ANU may explain why there appears to have been some confusion regarding the status of the Academic Board with some documents describing or categorising it as a Council Committee.⁷¹ It would be unusual for a University's Academic Board to be a Council committee and we welcomed the advice that the Academic Board is a stand-alone entity.

The Chair of the Academic Board is currently appointed by Council, on the recommendation of the Vice-Chancellor. Not surprisingly, given the changes that have taken place over the years and the fairly recent re-establishment of the Academic Board, the Academic Board and its Chairs are still establishing their authority within the University. Currently, the Chair of the Academic Board attends Council meetings as an observer. It is recommended that, in due course, when the role of the re-established Academic Board is well understood within the academic community, consideration should be given to enabling the academic staff, or the professoriate, to elect the Chair of the Academic Board. This would emphasise the independence of the body responsible for academic governance from the executive.

We also **suggest** that consideration be given to making the Chair of the Academic Board a Council appointed member of Council. We have allowed for this in our recommendations regarding the size and composition of Council (see paragraph 5.7 above). We considered recommending that the Chair of the Academic Board be an *ex officio* member of Council; indeed, the **Better Practice Framework** suggests that this should be the case (see Appendix C, paragraph 2.1.2.1 – 'official members'). The academic governance arrangements at ANU have, however, changed in recent years and we do not want the legislation to limit the University's flexibility in the future.

10. It is **recommended** that, in due course, consideration be given to the Chair of the Academic Board being elected by all academic staff or by the professoriate.

6.3 Audit and Risk Management Committee

This Council Committee includes external members whose particular expertise augments that of the Council members. This is good practice for a committee of this kind.

In our discussions with Council members it appeared that there was, or at least has been, some uncertainty regarding the respective responsibilities of this Committee and the Finance Committee regarding the external audit of the University's accounts. The Audit and Risk Management Committee Charter sets out the Committee's "responsibilities"; paragraph 5.5.3 of the Charter deals with reviewing the annual financial statements. It is **suggested** that the terms of reference of the Audit and Risk Management Committee might be clearer if they included:

- ensuring that the University's audited financial statements and accounts comply with the University's statutory responsibilities and recommending to Council that those financial statements and accounts be approved, and signed, for inclusion in the University's Annual Report.

We also **suggest** that Council clarify what is encompassed by the reference in the terms of reference of the Finance Committee to "consider the annual audited financial statements of the University" so that the roles of the two Committees are clear in this regard. It might provide clarity if the terms of reference of the Finance Committee were to provide that the Finance Committee is responsible for:

- overseeing the preparation of the annual financial statements of the University .

6.4 Committee on Conditions and Appointment of the Vice-Chancellor

Currently, the sole purpose of this Committee is to "determine the conditions of appointment (including salary) of the Vice-Chancellor".

⁷¹ See for example, Council Members' Handbook Volume 12, July 2014 page 25 and Australian National University Annual Report 2013 p 92.

Paragraph 2.1.4.4 of the **Better Practice University Governance Assessment Framework** suggests that the terms of reference of this Committee should be expanded and it should be re-named as a Remuneration Committee.

The *Remuneration Committee* could be responsible for matters such as:

- Monitoring and advising Council on matters relating to the University's strategies and policies concerning the recruitment, remuneration and management of staff
- Reviewing and approving the Vice-Chancellor's recommendations regarding the conditions of appointment, remuneration, performance assessment and incentive payments of staff who report to the Vice-Chancellor
- Determining the conditions of appointment (including salary) of the Vice-Chancellor
- Reviewing the performance of the Vice-Chancellor and determining her or his incentive payments.

11. It is **recommended** that the *Committee on Conditions and Appointment of the Vice-Chancellor* should be replaced by a *Remuneration Committee* with expanded terms of reference.

6.5 Emergency Appointment (Vice-Chancellor) Committee

Section 37 of the ANU Act gives Council power to appoint a person to act in an "executive office" during a vacancy in that office or during periods when the holder of the executive office is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office. The Act defines 'executive office' to mean the office of Vice-Chancellor or Deputy Vice-Chancellor.

According to the published statement of its role and functions, the *Emergency Appointment (Vice-Chancellor) Committee* was established to exercise the power of the Council in relation to the office of Vice-Chancellor, "provided that no such appointment by the Committee will, except with the approval of the Council, continue after the next succeeding meeting of the Council". It is made clear that there is an order of precedence in which members of the executive are requested to act as Vice-Chancellor and it is intended that this Committee "would only meet in cases of an extended and unanticipated absence of the Vice-Chancellor or in instances where no member of the University executive is available to act in the position". Council has delegated to the Chancellor authority to approve acting appointments to the office of Vice-Chancellor when he or she is absent for short periods of time.⁷²

We recommend that section 37 of the ANU Act should apply only to the office of Vice-Chancellor. Section 37 was enacted at a time when there was only one Deputy Vice-Chancellor at ANU. Universities now have a range of senior executive officers – COO, CFO, Pro Vice-Chancellor and Deputy Vice-Chancellors with particular portfolios; there is no justification for singling out the office of Deputy Vice-Chancellor to require that Council deals with vacancies in this office. Modern practice is to allow the Vice-Chancellor to make all such acting appointments.

In paragraph 6.4 we have recommended replacing the *Committee on Conditions and Appointment of the Vice-Chancellor* with a *Remuneration Committee* with expanded terms of reference. It is recommended that Council should integrate the *Emergency Appointment (Vice-Chancellor) Committee* into the *Remuneration Committee* in which case it might be titled *Remuneration and Appointments Committee*.

12. It is **recommended** that section 37 of the ANU Act (acting appointments) should apply only to the office of Vice-Chancellor and that Council should integrate the *Emergency*

⁷² <http://about.anu.edu.au/governance-structure/committees/emergency-appointment-vice-chancellor-committee> (accessed 1 November, 2014).

Appointment (Vice-Chancellor) Committee into the *Remuneration Committee* in which case it might be titled *Remuneration and Appointments Committee*.

6.6 Finance Committee and Investment Advisory Committee

These Committees include external members whose particular expertise augments that of the Council members. This is good practice for committees of this kind.

The Finance Committee's terms of reference appear to extend to some, although not all, aspects of the role we have recommended for a *Campus Planning Committee* or *Building and Estates Committee* (see paragraph 6.1). For example, the Committee is to advise the Council and the Vice-Chancellor on "the physical resources of the University including buildings and grounds, parking, and campus planning and development". If our recommendation regarding a new Council Committee is taken up, we **suggest** that the Finance Committee's terms of reference should be amended to make it clear that the Finance Committee advises the Council on the financial aspects associated with the University's physical resources.

The Investment Advisory Committee (IAC) is, formally, a sub-committee of the Finance Committee. There is, however, no reference to the IAC on the University Council website, in the Council Members' Handbook or in the 2013 Annual Report. The IAC appears on the Finance and Business Services Division's website where it is described as a sub-committee of the Finance Committee.⁷³ As a governance sub-committee, the IAC would normally be the responsibility of the Corporate Governance and Risk Office, but we were advised that, in fact, it is supported by the Finance and Business Services Division. More significantly, we were advised that the IAC has been seen by management as a management committee, being asked by the University's management to provide expert advice to the University's Investment Office. This mixing of governance and management roles appears to be confirmed by a Structure Chart which has lines from the IAC both to the Finance Committee and to the Investment Director.⁷⁴ If governance and management roles have, indeed, been conflated in this manner, it is regrettable. If a governance committee is asked to undertake, or advise on, day to day operations, it diminishes its capacity to fulfil its governance role.

13. It is **recommended** that, taking into account the advice of its Finance Committee, the Council should determine whether it is necessary to have an Investment Advisory Sub-Committee as a Sub-committee of the Finance Committee; if so, both its formal terms of reference and, in practice, the work it is asked to undertake, should be those of a governance committee and the Corporate Governance and Risk Office should assume responsibility for it. This would not preclude the management of the University establishing a management committee, even one drawing on external advice, to guide the day to day operations of the Investment Office.

6.7 Nominations Committee of Council

The Act provides that the membership of this Committee is the Chancellor and six others appointed by the Chancellor in accordance with guidelines determined by the Council.⁷⁵ The Council Guidelines provide that, in making appointments to the Nominations Committee, the Chancellor will consult widely, including with members of Council, members of Committees of Council, and the University Executive.

Currently, the role of this Committee is to recommend to the Minister the appointment of the seven external members of Council (see paragraph 5.1 above). If the recommendations regarding the size and composition of Council in paragraph 5.7 are adopted, the Nominations Committee will:

⁷³ <http://fbs.anu.edu.au/investments> (accessed 1 November, 2014).

⁷⁴ <http://fbs.anu.edu.au/documents/fbs-docs/investments-flowchart-structure.pdf> (accessed 23 November, 2014).

⁷⁵ Sub-section 10(2).

- make recommendations to Council regarding who should be the external, Council appointed member(s).
- put forward to the Minister the names of people who the Committee considers would be appropriate for appointment by the Minister, specifying the reasons for the suggestion and putting forward at least one more name than the number of vacancies.

The Nominations Committee would be required to have regard to the desirability of ensuring that:

- there is a balance of skills, expertise and gender among members of the Council;
- regard is had to the skills necessary to ensure that the Council can fulfil its responsibilities under the legislation; and
- Council members have an appreciation of the purposes of the University, its independence and academic freedom, and the capacity to appreciate the national role of the University and what the University's external community needs from it.

In making recommendations to Council regarding who should be the Council appointed member(s) and in putting forward to the Minister names of people who the Committee considers appropriate for appointment by the Minister, the Nominations Committee would also need to be mindful of the requirement that at least two of the Council members must have a high level of relevant financial expertise and at least one member must have a high level of relevant commercial expertise. This would not signify a major change in the role of the Committee. Given the significance we accord to a skills-based Council, we recommend that the Nominations Committee should develop a 'skills register' to ensure that the members of Council, collectively, meet the needs of a skills-based board.

14. It is **recommended** that the Nominations Committee should develop a 'skills register' to ensure that the members of Council, collectively, meet the needs of a skills-based board.

Those who we consulted thought that the Nominations Committee had done well in identifying Council members with the necessary skills. It seems that the Committee has placed emphasis on identifying people whose home base is located outside the east coast of Australia. This is consistent with the University's purpose as a national university, but we **suggest** that consideration should be given to also including a member or members with international higher education experience, particularly someone with experience at another 'national' university.

Possible gaps that were identified in our consultations were: someone with experience with philanthropy and someone with experience with educational technology.

When identifying the skills that are required from time to time, care must be taken to ensure that a gap in management focus is not mistaken for a gap in the skills and experience necessary for Council to undertake its governance functions. We recommend that the Council should re-examine the Guidelines by reference to which the Nominations Committee operates (see paragraph 5.3 above regarding the current Guidelines) to ensure that they reflect the skills required of Council members and the responsibilities of Council members (see paragraph 4.1 above).

15. It is **recommended** that the Council should re-examine the Guidelines by reference to which the Nominations Committee operates to ensure that they reflect the skills required of Council members and the responsibilities of Council members.

6.8 Honorary Degrees Committee

The role of the Committee is to invite those who satisfy the terms of the Honorary Degree Rules to accept nomination for honorary degrees and to recommend the names of those who accept nomination to the Council for admission. This is a standard university governance committee.

We note that the membership needs to be updated to reflect the current organisational structure of the University.

Given the eminence of the ANU alumni and ANU staff, we **suggest** that Council consider broadening the role of the Committee to include identifying and nominating appropriate people associated with the University to be proposed by the University for recognition under the national honours scheme.

7. Induction; professional development; and succession planning

See Better Practice University Governance Assessment Framework (Appendix C to this Report) paras 2.1.5 and 2.1.6.

7.1 Induction and professional development

The Council Members' Handbook describes the current program of induction and professional development.⁷⁶ The aim is to:

- ensure that Council members are:
 - o aware of their duties and responsibilities
 - o acquainted with aspects of the University's operations and the Higher Education sector
- build on Council members' existing expertise.

The Induction Program takes the form of briefings from key Council and management personnel. New Council members are given an induction kit which includes documents such as the ANU's Strategic Plan, the Act and the executive structure.

Council members reported that they found the Induction Program informative and that it has improved considerably in recent times.

In terms of ensuring that Council members are aware of their duties and responsibilities and are acquainted with aspects of ANU's operations, we make two **suggestions**. First, it might assist Council members if they were provided with a glossary of terms to assist them to understand language that may be unfamiliar to them (EFTSL, NUHEP, TEQSA, Go8 etc). Secondly, several members said that they would like to better understand the University's finances; we suggest that the relevant officer(s) should provide a follow up session for new Council members, to which other members could also attend, a month or so after the initial induction briefings.

In our judgment, while the Induction Program introduces members to the ANU, it does not include sufficient material directed at acquainting new members with the Higher Education sector. Council members should be provided with information regarding matters such as the structure of the sector, recent reviews and changes, current challenges facing the sector and information about ANU's operations relative to that of other Australian universities (student numbers, income, grants, surpluses etc). The information should be provided in written form well before the induction briefing sessions so that new Council members can seek clarification regarding any matter at the face to face session. Investing time in providing this information to new members at the outset – rather than by osmosis and serendipitously as items are addressed at Council meetings - will enable new Council members to add value sooner.

Whether the Induction Program builds on Council members' existing expertise is linked to the question of professional development. The Council Members' Handbook (page 35) states that:

Council members are encouraged to undertake professional development activities. Where, in the evaluation of a Council member's performance, a skills gap is identified, the Chancellor will discuss with the member, resources and training which might be provided to assist.

Although it is clear that there is a genuine desire to assist Council members, it is rather too late to identify professional development needs at the time of the evaluation of a Council member's performance at the end of the year; this is particularly problematic in the case of students who usually serve only one year as a Council member. A more proactive approach is required and one that is initiated and driven by the Council rather than the Council member. It is recommended that the Chancellor makes contact with all Council members in the second

⁷⁶ Council Members' Handbook, Volume 12, July 2014, page 35.

quarter of the year to discuss their professional development needs. A list of possible programs should be made available to Council members and discussions held regarding what, if anything, might be beneficial for each particular member. This should also extend to members of Council Committees.

There are a number of programs regarding governance available in Australia although few, if any, are focused on university governance. It is recommended that the ANU take a leadership role in the sector by working with other Australian universities to consider jointly paying for the development of a program by an appropriate provider targeted at the needs of members of university governing bodies and committee members that will be offered each year. Such a program could be based around modules that address particular areas of need – for example, finance, risk etc – so Council members and the members of Council Committees can enrol in particular modules.

16. It is **recommended** that the Induction Program should be expanded to include material acquainting new members with the Higher Education sector; this material should be provided in written form well before the induction briefing sessions.
17. It is **recommended** that the Chancellor make contact with all Council members in the second quarter of each year to discuss their professional development needs. A list of possible programs should be made available to Council members and discussions held regarding what, if anything, might be beneficial for each particular member. A similar process should extend to members of Council Committees who are not Council members.
18. It is **recommended** that the ANU take a leadership role in the sector by working with other Australian universities to consider jointly sponsoring the development of a program by an appropriate provider targeted at the professional development needs of members of university governing bodies and governance committees, with modules of the program being offered each year.

7.2 Succession planning

In recommending people for appointment (and reappointment) by the Minister, the matters that the Nominations Committee takes into account include:

- The need to ensure a level of continuity within its membership such that where possible members' terms of office should overlap;
- The need for renewal, with Council members normally serving for a maximum of 8 years.⁷⁷

The current Chancellor has undertaken a great deal of work to ensure that the terms of office of the members appointed by the Minister are 'staggered' over coming years. We understand that the expiration of the terms of the current seven Ministerial appointees is as follows:

Member A 30 June 2017 (when the member will have served 13 years as her or his original appointment commenced on 1 July 2004)

Member B 30 June 2016 (when the member will have served 4 years as her or his original appointment commenced on 21 June 2012)

Member C 30 June 2018 (when the member will have served 4 years as her or his original appointment commenced on 1 July 2014)

Member D 30 June 2018 (when the member will have served 4 years as her or his original appointment commenced on 1 July 2014)

⁷⁷ Council Members' Handbook Volume 12, 2014 pp 10 – 11.

Member F 30 June 2018 (when the member will have served 4 years as her or his original appointment commenced on 1 July 2014)

Member G 30 June 2016 (when the member will have served 10 years as her or his original appointment commenced on 28 June 2006)

Member H 31 July 2015 (when the member will have served 4 years as her or his original appointment commenced on 1 August 2011).

8. How Council can best work with the Vice-Chancellor and management

See Better Practice University Governance Assessment Framework (Appendix C to this Report) paras 2.1.7.1, 2.1.7.2, 2.1.7.4 and 2.4.

There is a connection between good governance and good management. It is possible to have good management without good governance, but that would make for a bleak experience for the Vice-Chancellor who is an ex officio member of Council. It is not possible to have bad management and good governance – at least not for long – as a well-performing governing body should take steps to remedy the performance of management. Of course, the best situation is one in which there is both good governance and good management. High performing members of a university's senior management team seek, and are happy to receive, robust evaluations of their proposals and plans. A properly functioning Council provides such robust reviews and, where appropriate, acknowledges great work on the part of the senior management.

Nowhere is the need for good working relationships more necessary than in respect of the relationship between Chancellor and Vice-Chancellor. The relationship should be borne out of mutual trust and respect such that it can survive the toughest of applications of the governance process. It is not possible to legislate for this, but role clarity and good communication are key to it.

In paragraphs 1.2 and 2.1.1 of the Framework and in paragraph 4.1 above we have dealt with the broad, formal roles and responsibilities of Council as the governing body. In this section we turn to some specific matters regarding the interface between governance and management.

8.1. Strategy setting

See Better Practice University Governance Assessment Framework (Appendix C to this Report) paras 2.2 and 2.3.

Council considers and approves the University's Strategic Plan. At each meeting a 'strategic presentation' is made by the Vice-Chancellor or other member of the Executive; the topics are identified in advance as part of the Council's schedule of business for the year. Despite this, the view was expressed by several Council members that they would like to have greater input into the development of the University's strategic response to changes in the University's operating environment. Consistent with the analysis in paragraph 2.2 of the Framework and paragraph 4.1 above, Council should be concerned with strategic rather than operational matters. Nonetheless, there is more to strategy setting than approving a Strategic Plan.

There is a connection between Council members' wish to have greater input into strategic responses and points made in other parts of this Report:

First, in paragraph 4.4 we recommended that the Council should consider and approve the high level principles to be applied to determine whether to offer degree and other award programs (this would include considering high level policy issues such as whether the University should offer sub-degree level qualifications) and the high level principles regarding the fees to be charged, where relevant. These are the kinds of discussions in which Council members would like to be involved; they are not at the level of a Strategic Plan, but the principles have the potential to have a significant impact on the University and might even be said to have more of an immediate and tangible effect than the Strategic Plan.

Secondly, in paragraph 7.1, we suggested that the current Induction Program does not include sufficient material directed at acquainting new members with the Higher Education sector. If Council members were provided with the information suggested as

part of the induction process - structure of the sector, recent reviews and changes, current challenges facing the sector and information about ANU's operations relative to that of other Australian universities (student numbers, income, grants, surpluses etc) – Council members would have sufficient background knowledge to be confident that they are being properly informed regarding such matters.

8.2. Communication and building good relations

The current Chancellor and Vice-Chancellor have done much to ensure that Council members have contact with ANU staff and that they are informed about the activities of the University. Following each Council meeting, Council members visit an area of the University for lunch, a presentation by staff and students regarding the area's operations, and a tour of facilities. Many members of staff spoke highly of these meetings.

The agendas and confirmed minutes of Council meetings are published on the Council website.⁷⁸ Given that these are the confirmed minutes, there is a significant delay between a Council meeting and the University community being able to inform itself about that meeting.

19. It is **recommended** that, within a short time after each Council meeting, a short statement should be placed on the Council website, authorised by the Chancellor, summarising 'what happened at Council'.

8.3. The Vice-Chancellor

Sub-section 34(2) of the ANU Act provides that the Vice-Chancellor:

- (a) is the chief executive officer of the University; and
- (b) has such powers and duties as the Statutes prescribe or, subject to the Statutes, as the Council determines.

The *Vice-Chancellorship Statute 2013* provides that "The Vice-Chancellor is the executive officer of the University."⁷⁹ For clarity and consistency with the Act, we recommend that the Vice-Chancellor be designated in the *Vice-Chancellorship Statute* as "chief executive officer". Furthermore, it would better explain the Vice-Chancellor's relationship with Council if the *Vice-Chancellorship Statute* provided that he or she is "accountable to Council for the exercise of the responsibilities and powers of the Vice-Chancellor".

Section 6 of the *Vice-Chancellorship Statute 2013* sets out the duties and powers of the Vice-Chancellor:

6.1 Subject to the Statutes and to any resolution of Council, the duties of the Vice-Chancellor as executive officer of the University are to control and manage:

- (a) the affairs and concerns of the University; and
- (b) the real and personal property at any time vested in or acquired by the University including the disposal of that property.

6.2 The Vice-Chancellor has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of the Vice-Chancellor's duties.

Contemporary language would refer to the Vice-Chancellor as responsible for the "leadership and management of the University" rather than controlling and managing the matters set out in section 6.1(a) and (b) and the reference would be to "responsibilities" rather than "duties". Furthermore, it would better explain the Vice-Chancellor's relationship with Council if the Statute provided that he or she is responsible for

⁷⁸ <http://about.anu.edu.au/governance-structure/council/meetings>

⁷⁹ Vice-Chancellorship Statute 2013, s 4(1).

providing Council and its Committees with adequate and timely information to enable Council to fulfil its responsibilities as the governing authority of the University and Council Committees to fulfil their terms of reference.

Section 7 of the *Vice-Chancellorship Statute 2013* gives the Vice-Chancellor power to appoint persons to act in office. Presumably this has been included to make it clear that Council is delegating its power to make temporary appointments under section 37 of the Act to the Vice-Chancellor. This power would ordinarily reside in a chief executive officer by virtue of his or her office. It follows that, if the recommendation made in paragraph 6.5 above that section 37 (acting appointments) should apply only to the office of Vice-Chancellor, there should be no need for Section 7 of the *Vice-Chancellorship Statute*.

Section 35 of the current ANU Act provides that the Council must appoint a Deputy Vice-Chancellor of the University, or more than one. This was enacted at a time when the senior leadership of the ANU was organised around a Vice-Chancellor and a Deputy or Deputies. Given the size and complexity of modern universities, they now have a range of senior executive officers –Senior Deputy Vice-Chancellor, Provost, Deputy Vice-Chancellors with particular portfolios, pro Vice-Chancellor, COO, CFO, etc; there is no justification for singling out in the Act the office of Deputy Vice-Chancellor to require that Council makes such appointments. Modern practice is to allow the Vice-Chancellor to make senior executive appointments, reporting the appointment to Council, with Council designating in a Statute those roles in respect of which it reserves the power to make the appointment on the recommendation of the Vice-Chancellor.

In paragraph 2.2 above, it was suggested that university legislation and associated governance should be clear about processes should relationships break down. It is preferable that the Vice-Chancellor, Council and, indeed, all interested parties are aware of the process to be followed rather than establishing a process in the 'eye of a storm'. On the other hand, it is impossible to anticipate all the circumstances in which a breakdown in relationships might occur. Accordingly, we recommend that the *Vice-Chancellorship Statute* should provide that, if a question arises as to the capacity or fitness of the Vice-Chancellor to perform the responsibilities of the office of Vice-Chancellor (including a breach by the Vice-Chancellor of the duties imposed by the PGPA Act (see paragraph 4.3.2 above)), Council may convene an inquiry to investigate the question. The form of the inquiry would depend on the circumstances of the case. If the inquiry found that the Vice-Chancellor is incapable or unfit to perform the responsibilities of the office, Council may terminate the appointment.

20. It is **recommended** that the *Vice-Chancellorship Statute* be amended to adopt more contemporary language regarding the role of the Vice-Chancellor.
21. It is **recommended** that the *Vice-Chancellorship Statute* be amended to deal with the process to be followed if there is a breakdown in relationships or a breach of duty.
22. It is **recommended** that section 35 of the current ANU Act should be repealed on the understanding that, as chief executive officer, the Vice-Chancellor has authority to make executive appointments, reporting the appointment to Council, with Council designating in a Statute those roles in respect of which it reserves the power to make appointments on the recommendation of the Vice-Chancellor.

8.4. The Chancellor

Section 32 of the ANU Act provides that the Council must appoint the Chancellor of the University. The appointee must not be a student or an employee of the University. It is

recommended that, to ensure role clarity, the *Chancellorship Statute* should provide that the Chancellor does not hold an executive role.⁸⁰

Sub-section 3.1 of the *Chancellorship Statute 2012* provides that the Chancellor holds office for a period of 3 years and is eligible for reappointment.

Section 15 of the ANU Act deals with the vacation of office of a member of the Council. One ground on which a Council member's office may become vacant is breach of the duties imposed by the PGPA Act (see paragraph 4.3.2 above); another is if, in the Council's opinion, the member of Council is incapable of performing her or his duties. This section does not, however, apply to the Chancellor who is an *ex officio* member of Council. We agree with the conclusion of the NSW General Purpose Standing Committee No 2, in its 2009 report on the *Governance of NSW universities*, that:

a timely, fair and transparent mechanism to remove a Chancellor who has lost the confidence of their governing body should be available ... Such a mechanism may reduce the likelihood of protracted and damaging disputes between a Chancellor and a governing body.⁸¹

The *Chancellorship Statute 2012* provides that:

3.3 The Council may, by resolution, establish procedures for determining whether the Chancellor retains its confidence and may make provision for the removal of the Chancellor from office if the Council determines that such confidence is no longer held.

We recommend that section 3.3 should be amended to make it clear that one of the grounds on which the Council might form the opinion that the Chancellor no longer retains its confidence is a breach by the Chancellor as a member of Council of the duties imposed by the PGPA Act (see paragraph 4.3.2 above).

23. It is **recommended** that the *Chancellorship Statute* should provide that the Chancellor does not hold an executive role.
24. It is **recommended** that section 3.3 of the *Chancellorship Statute* should provide that a breach of the duties imposed by the PGPA Act could constitute a ground for forming the opinion that the Chancellor no longer retains the Council's confidence.

8.5. Protocols relating to governance and management

The external members of Council all understood that, with the exception of the processes of Council or Council Committees and informal interactions, members of Council and Council Committees should not give directions to members of staff without the express or implied consent of the Vice-Chancellor. It would be desirable to formalise and document these protocols.

25. It is **recommended** that Council should adopt protocols to describe the interface between members of Council (and members of Council Committees) and the staff of the University; these protocols should make it clear that the Vice-Chancellor is the primary source of advice to Council and Council Committees and, with the exception of the processes of Council or Council Committees, members of Council and members of Council Committees may give directions to members of staff only with the express or implied consent of the Vice-Chancellor.⁸²

⁸⁰ For a similar provision in relation to the Chancellor of the University of Melbourne, see [Standing Resolution 1.3 - Governance of The University paragraph 3.4](http://www.unimelb.edu.au/unisec/Srvol1/sr13.html#r1) <http://www.unimelb.edu.au/unisec/Srvol1/sr13.html#r1> (accessed 12 November, 2014).

⁸¹ [http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/083625c92adc1470ca2575c70083b689/\\$FILE/090526%20FINAL%20report.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/083625c92adc1470ca2575c70083b689/$FILE/090526%20FINAL%20report.pdf) page xi.

⁸² For a similar provision in relation to Council members at the University of Melbourne, see [Standing Resolution 1.3 - Governance of The University paragraph 2.5](http://www.unimelb.edu.au/unisec/Srvol1/sr13.html#r1) <http://www.unimelb.edu.au/unisec/Srvol1/sr13.html#r1> (accessed 12 November, 2014).

9. Evaluation of effectiveness

See Better Practice University Governance Assessment Framework (Appendix C to this Report) para 2.1.6.

We were advised that Council evaluates its performance on a biennial basis. Under the leadership of the Chancellor, Council evaluated its performance in March 2011 and February 2013 (and is scheduled to again evaluate its performance in early 2015).⁸³ The following methodology is adopted:

- The Chancellor conducts one-on-one confidential conversations with Council members with the aim of giving and receiving feedback on individual performance, getting a sense of members' degree of comfort or otherwise with present Council structure and process, and discussing any other issue of concern or interest relating to the strategic direction of ANU.
- The Chancellor tables a report summarising the major issues and themes discussed over the course of the one-on-one meetings with Council members.
- Council discusses this report at its annual strategic retreat.⁸⁴

The Chancellor provided a copy of his 2013 report. This reports on the issues and themes discussed with Council members. It is a thoughtful and comprehensive document addressing a number of factors relevant to the performance of Council, its general role, structure and membership, and meetings. What we cannot assess is whether the discussion of this report at the Council Planning Day in February 2013 led to a proper evaluation of whether the Council as a whole is fulfilling its responsibilities. The effectiveness of Council as a whole is more than the aggregation of the contributions of individual members. One way of approaching this might be for Council to discuss how it has contributed to ANU's success in the previous year having regard to Council's primary responsibilities (see para 4.1 above). An external facilitator might sometimes assist by leading this discussion.

It would be better practice for Council to at least discuss its effectiveness each year. Different approaches could be taken with perhaps a discussion one year and fuller assessment with an external facilitator the next. On some occasions Council might decide that it would be useful to engage an external party to seek the views of Council members and report back to Council.

26. It is **recommended** that, in addition to the current biennial discussions with Council members, Council should address the question of its collective effectiveness annually.

⁸³ Information provided by Ms Kate Molloy, Director, Corporate Governance and Risk Office "ANU Governance Brief" September 2014 page 7.

⁸⁴ Information provided by Ms Kate Molloy, Director, Corporate Governance and Risk Office "ANU Governance Brief" September 2014 pages 7 – 8.

10. Meetings and meeting papers

See Better Practice University Governance Assessment Framework (Appendix C to this Report) paras 2.1.6.2 and 2.4.2.

The Council usually meets six times a year. When compared with other university governing bodies this is not unusual, but it is at the lower end of the number of meetings. This is understandable given that the Council is committed to a membership sourced nationally.

A rolling agenda program is developed for the year ahead. We **suggest** that, in developing the program, the responsibilities referred to in paragraph 4.1 above should be mapped against it to ensure that the responsibilities of Council are covered.⁸⁵

We were provided with a set of Council papers from a recent meeting. The agenda follows a formal, and well-ordered, structure designed to give prominence to strategic issues. The following comments are made about the set of papers we saw:

- the papers in the sections headed 'key business items' and 'strategic issues' dealt with important strategic matters; the papers included a wealth of comparative data; most of these items were for noting rather than calling upon Council to make a decision
- the papers in the section headed 'other matters for decision' did, as the heading suggests, call upon Council to make a decision; these papers dealt with less significant matters, but, nonetheless, matters which fall within the governance remit
- the papers in the section 'other matters for noting' were mainly reports from Council Committees; in one case, the report was the minutes of the most recent meeting of the Academic Board.

We **suggest** that reports from all Council Committees and the Academic Board should take the form of a report regarding each meeting held since the last report to Council. In addition to identifying any recommendations for Council, the report should summarise 'significant items considered' and list, in bullet dot form, 'other items considered', rather than including the full minutes. The report could state that full minutes are available upon request from the Corporate Governance and Risk Office.

We also **suggest** that Council consider including a 'general discussion item' in each agenda after 'key business items' during which Council members could raise with the Vice-Chancellor or a member of the Executive any issue of concern. This would be in addition to the current general 'question time' which is located at the end of the Council agenda as part of 'other business'. While Council members may take the view that they already have the capacity to ask a question, or raise a concern, at any time, formalising this with a specific agenda item, explicitly directed at the Vice-Chancellor and members of the Executive (who are present at Council meetings), might provide a more focused opportunity for questions of those holding leadership positions.

The Chancellor, as Chair, is committed to ensuring that there is free and open debate and we understand that the preference is for consensus based decision-making. Most of the time, a consensus based decision-making approach is entirely appropriate. Recognising when it is *not* appropriate is an important part of the role of the Chancellor as Chair. On some occasions the Chair, of her or his own initiative, or at the request of Council members, should be able to revert to quite formal decision-making. This would generally be the case if a recommendation set out in the Council papers were to be amended or added to.

We note that there are no 'Standing Orders' or 'Operating Provisions' dealing with the conduct of meetings. This is undesirable. We **suggest** that, if it is necessary to proceed with a formal vote, it should be possible to revert to rules that deal with matters such as:

- Voting – the rules might specify that:

⁸⁵ For an example, see <https://sharepoint.deakin.edu.au/sites/Governance/Business%20schedules/council-business-schedule.pdf> (accessed 11 November, 2014).

- o voting must be by show of hands and the result must be declared by the Chair; and
- o the Chair has a vote and, in the case of an equality of votes, a casting vote
- Amendments to motions – the rules might specify that:
 - o an amendment moved by a member must not be discussed or put to the vote unless it has been seconded by another member; and
 - o an amendment must be reduced to writing, signed by the mover, and handed to the Minute Secretary immediately it has been moved and seconded.

The Standing Orders could provide that, wherever possible, the Council will adopt consensus based decision-making processes and that these formal rules will be applied only if the Chancellor or another Council member seeks to have them applied. In most cases it would not be necessary to apply the formal procedures, but the Council should revert to quite formal decision-making, as set out in the Standing Orders, if it appears that there may be different views among the Council members regarding a particular item. If it is necessary to go to a formal vote, the requirements that the result must be declared and that amendments must be in writing provide the formality necessary for all Council members to be sure on what they are voting; it provides certainty and protection for the Chancellor as Chair and for the Minute Secretary.

Specifying what is to happen if there is an equality of votes could be important if the recommendations in paragraph 5 above are adopted regarding the composition of Council as this may result in an even number of Council members.

Council meetings are open to observers although space limitations mean that no more than fifteen observers are admitted to any meeting. The Council Members' Handbook (page 19) provides that "The Chair may declare a particular item to be confidential and observers will be asked to leave until consideration of that item has finished." It is recommended that the Standing Orders should provide that, at the commencement of each Council meeting, before observers are admitted, Council members should be provided with an opportunity to request that any particular item be considered *in camera* (the Chancellor advised that this is current practice); at this time, Council members could also consider whether an item designated as confidential in the papers should be considered in open session. The items in respect of which a request might be made for the meeting to be held *in camera* should extend to the 'general discussion item' if our suggestion that this should be included as an agenda item is adopted.

None of the papers for the Council meeting that we viewed mentioned any consultation with staff or students regarding the matters dealt with in the paper. This may have been because the particular paper did not require such consultation or it may have been apparent that such consultation had taken place. Nonetheless we recommend that Council should establish protocols regarding consultation with staff and students.

27. It is **recommended** that Council adopt rules in the form of 'Standing Orders' or 'Operating Provisions' dealing with the conduct of meetings.
28. It is **recommended** that those rules should provide that, at the commencement of each Council meeting, before observers are admitted, Council members should be provided with an opportunity to request that an item, not already designated as a confidential item, should be considered *in camera*; at this time, Council members could also determine whether an item designated as confidential in the papers should be considered in open session.
29. It is **recommended** that Council establish protocols regarding consultation with staff and students.

APPENDIX A -Terms of Reference

- To review the *Australian National University (ANU) Act 1991* with a view to ensuring it supports the university to operate effectively in the current and future higher education environment in Australia and internationally.
- Ensure governance arrangements embedded in the *ANU Act 1991* reflect contemporary governance practices and will assist the university to aspire to the highest international standards for operation of a university.
- To advise on the roles and responsibilities of the ANU Council set out in the *ANU Act 1991* and the arrangements in place to support the achievement of these roles and responsibilities including:
 - o The size and composition of council membership—ensuring members' skills and knowledge are diverse, reflecting a contemporary governance and management approach
 - o Councillor induction and succession planning
- How the Council can best work with the Vice Chancellor and University management team to achieve the University's objectives and how its effectiveness will be evaluated.

APPENDIX B - Methodology and approach

There were five project stages:

1. Define Approach

This involved reaching agreement with the Reference Group regarding the activities and timeline that formed the basis of the review.

2. Develop Best (Better) Practice Framework

The objective of this stage of the project was to develop a best (or better) practice framework as the basis for analysing the Australian National University (ANU) Act 1991 and the ANU's governance arrangements. The framework provided the basis for the recommendations.

The development of the framework was based on an examination of governance literature to identify best practice frameworks, as well as consideration of relevant examples from the higher education and commercial sectors.

3. Analyse Act and Current Arrangements

The objective of this stage of the project was to analyse the Act and the effectiveness of the current governance arrangements.

This involved a desktop review of relevant documentation such as the Council Members' Handbook and governance related policies. Stakeholder consultations were conducted to gain an understanding of practice realities and potential limitations of the current arrangements. This involved consultation with current Council members and others as agreed with the Reference Group.

4. Apply Best Practice Framework to Act and Current Arrangements

The objective of this stage of the project was to determine the limitations of the current arrangements and identify opportunities to better align them with contemporary governance and management practices; ensure that they are fit for purpose in the new higher education policy environment; and help the University to aspire to high international standards.

The Act and the current arrangements were reviewed against the framework. A gap analysis was completed. The analysis identified improvement opportunities and the high level changes required to implement them.

5. Draft Findings

The objective of this stage of the project was to develop and test the review findings. Findings with regard to the current arrangements and the proposed recommendations were tested with the Reference Group.

APPENDIX C - Better Practice University Governance Assessment Framework

1. Introduction

The Better Practice University Governance Assessment Framework (the Framework) has been developed to enable Deloitte to assess the Australian National University Act 1991 (Cth) and the governance arrangements of the Australian National University (ANU).

The Framework is principle based and flexible enough to apply to any Australian University. The Framework is not designed as a 'code', and the principles and recommendations in this Framework are not mandatory.

1.1 Overview of the Framework

The Deloitte Governance Framework has been used as a basis for preparing this Framework. The Deloitte Governance Framework is the result of a three-year process that involved the input of many subject-matter experts within Deloitte, in addition to feedback provided by board members, corporate executives, lawyers, academics and governance experts.

The Deloitte Governance Framework has been modified so that it is directed at universities. The modifications were influenced by what we learned from a review of:

- Australian and international literature regarding the governance of universities.
- The reports of numerous relevant parliamentary and other inquiries in Australia and internationally.
- The governance arrangements that currently operate in universities in Australia and internationally.

Figure 1: The Deloitte Governance Framework



The Better Practice University Governance Assessment Framework is fit-for-purpose in undertaking the assessment of ANU's governance arrangements.

1.2 Key Elements of the Framework for Council

The top half of the Framework highlights areas of the governance system where the responsibility of the Council is typically heightened. It is not generally considered sufficient for the Council to merely understand and monitor the University's operating models in these areas. Either because of specific legal or regulatory requirements, or because of the increased expectations of stakeholders, the Council is an active party in the process. There are a number of specific duties and decisions related to each of these governance elements that cannot be delegated to the management of the University. Recognising that some university's will choose to draw the line differently, the Council governance elements that

may typically fall into this category include governance (used here to refer to the Council's structure and composition), strategy, performance, integrity, talent and risk governance.

The Council's roles and responsibilities for each of these governance elements can be summarised as follows, with more detail contained in section 2:

- **Governance.** The Council establishes structures and processes to fulfil its responsibilities that take into consideration the perspectives of regulators (eg TEQSA), government, management, staff, students and the community.
- **Strategy.** The Council advises management in the development of strategic priorities and plans that align with the mission of the University and the best interests of stakeholders, and that have an appropriate short-, mid-, and long-range focus. The Council also actively monitors management's execution of approved strategic plans as well as the transparency and adequacy of internal and external communication of strategic plans.
- **Performance.** The Council reviews and approves University strategy, annual operating plans and financial plans. It also monitors management execution against established budgets as well as alignment with strategic objectives of the University.
- **Integrity.** The Council sets the ethical tenor for the University, and actively participates in programs designed to promote legal and regulatory compliance and appropriate standards of honesty, integrity and ethical behaviour throughout the University.
- **Talent.** The Council selects, evaluates, and compensates the Vice-Chancellor and oversees the talent programs of the University, particularly those related to executive leadership.
- **Risk governance.** The Council understands and appropriately monitors the University's strategic, operating, financial, and compliance risk exposures, and it collaborates with the leadership team in setting risk appetite, tolerances and alignment with strategic priorities.

2. Framework Assessment Elements

2.1. Governance

The governance element within the framework is described as the Council establishing structures and processes to fulfil its responsibilities.

2.1.1. Roles and responsibilities

The primary responsibilities of the Council are to:

- Appoint the Chancellor.
- Appoint the Vice-Chancellor as the Chief Executive Officer of the University and monitor his or her performance.
- Set the University's strategic goals and monitor progress towards the achievement of those goals.
- Oversee academic activities and management effectiveness.
- Ensure responsible financial and risk management.

2.1.2. Council composition, skills sets and competency

As the University's principal governing body, it is critical that the Council has a balance of members with the appropriate skills and experience to undertake their responsibilities. This will include the establishment of committees to support Council (further detail is provided in section 2.1.4).

2.1.2.1. Size

For a Council to function optimally, there should be some flexibility regarding membership and the number of members to meet the University's specific requirements which may change from time to time.

Better practice suggests that Council representation should be reflective of the various stakeholders involved with the University including the government, executive management, staff, students and the community.

The following guidance is provided as a minimum:

Official members

A maximum of three *ex-officio* members which includes the Chancellor, Vice-Chancellor and usually the Chair of the Academic Board or equivalent.

University-appointed members

The University Council can appoint up to half of the members (excluding *ex-officio*) members with the requisite skills and experience to its Council. Council has the option to appoint staff and students as Council members provided that they have the necessary skills and experience. Staff and student members must be appointed *ad personam* or elected *ad personam*.

Government-appointed members

The number of government-appointed members must be equal to or more than the number of members appointed by the University's Council, provided that the total number of Council members must not exceed the total agreed to by the University.

All appointments to Council must take into account the appointment process outlined in section 2.1.2.2 and the requisite skills and experience noted in section 2.1.2.3.

2.1.2.2. Council appointment process

The appointment process for University-appointed and Government-appointed members should follow a formal appointment structure, after taking into account the requisite skills sets and experience required as outlined in section 2.1.2.3. The Nominations Committee should play a key role in this appointment process, maintaining a skills register (refer to section 2.1.4).

2.1.2.3. Skills sets

Council collectively should have the specific skills and experience required to provide value to the governance of the University.

These collective skills include, but should not be limited to:

- Financial expertise (mandatory for a minimum of two members).
- Commercial expertise (mandatory for at least one member).
- Understanding of risk management.
- Legal expertise.
- University and/or education sector experience.
- Information technology expertise.
- Understanding of environmental and sustainability issues.

2.1.2.4. Diversity

Council members must have diversity in terms of gender, ethnicity, nationality and age.

2.1.2.5. Term of appointment

Council, through the Nominations Committee, should agree to an appropriate term for the appointment for Council members and ensure that succession planning is in place taking into account the interests of continuity and renewal.

Better practice suggests that the appointment period should be between three to four years, with no Council member to serve more than two terms.

2.1.2.6. Independence

A key attribute of an effective Council is that it consists of a majority of independent members. An independent member is a person who is not employed by the University, or a current student of the University, and who is free of any business or other relationship that could materially interfere with the independent exercise of his or her judgement.

2.1.2.7. Controlled entities

Council should be actively involved in the approval of the establishment of controlled entities and information to enable regular monitoring of the performance of these entities should be provided to Council.

2.1.3. Council remuneration

Council members who are not employees of the University should be remunerated in accordance with the size and complexity of the University and having regard to the additional responsibilities borne by the Chancellor and Council members who are also Chairs or members of key committees.

Council members who are employees of the University should be provided with time release to perform their responsibilities as Council members.

2.1.4. Committee structures

The Council may delegate functions and powers to members of a committee consisting of members of the Council or members of the Council and other persons. The use of committees allows the Council to facilitate focused decision making regarding particular matters critical to the stewardship of the University. It also allows the Council to access the expertise of those with knowledge and skills focused on a particular area.

At a minimum better practice suggests that committees should include:

2.1.4.1. The Audit and Risk Committee

The key responsibilities of the Audit and Risk Committee typically include providing independent assurance and advice in the following areas:

- Risk management.
- Internal control system.
- Financial statements.
- Compliance requirements.
- Internal audit.
- External audit.
- Other relevant functions including review of the University's governance arrangements and performance framework.

A Council might divide the responsibilities of the Audit and Risk Committee into two separate Committees.

2.1.4.2. The Nominations Committee

Key responsibilities of the Nominations Committee may include:

- Identifying the skills and experience that will be needed to complement that of the other members of the Council.
- Identifying persons who may be suitable for appointment as such a member.
- Recommending to Council the appointment of the University-appointed members (see para 2.1.2.1 above). Council may take the view that categories of staff and students have the necessary skills and experience and should therefore be appointed, but such members should be appointed *ad personam* or elected *ad personam*.
- Recommending to the Minister suitable members to be appointed to the University's Council. Recommendations to the Minister should be at least one more than the number of vacancies. The Chancellor together with the Chair of the Nominations Committee should be responsible for direct communication with the Minister and his or her office in relation to nominations being presented.

2.1.4.3. The Finance Committee

Key responsibilities of the Finance Committee may include:

- Making recommendations relating to the University's financial and business affairs.
- Providing advice on the investment objectives of the University.

2.1.4.4. The Remuneration Committee

Key responsibilities of the Remuneration Committee may include:

- Reviewing the performance of the Vice-Chancellor and other senior management on an annual basis.
- Reviewing and determining the level of remuneration of the position of Vice-Chancellor and other senior management on an annual basis.

2.1.5. Council induction and on-going education

Professional development programs are an integral part of the development and enhancement of the capacity of Council members to fulfil their responsibilities. These should include both Induction programs for new Council members and ongoing Professional Development programs that are reviewed on a periodic basis.

2.1.6. Council effectiveness

2.1.6.1. Terms of reference

Council should have in place documented terms of reference, similar to that of Council Committees, which outline its roles and responsibilities (noting that the legislation establishing the university may effectively establish these terms of reference).

2.1.6.2. Conduct of Council meetings

For Council meetings to be effective, the following should be in place:

- The Council should meet regularly to effectively fulfil its responsibility and duties.
- The agenda setting process should allow for appropriate issues to be raised as necessary, including the need for *in-camera* sessions.
- Sufficient time should be scheduled for Council meetings.
- Council members should receive the papers timeously, and the papers should provide clarity regarding the recommendation being put forward to the Council.
- Council members should have unrestricted access to the information needed to support key decisions and to perform their role effectively.
- Council meetings should be conducted ethically and in a manner that encourages open discussion, healthy debate, and allows each Council member to participate in discussion and decisions.
- Council meeting minutes should be appropriately and timely documented and distributed after the meeting.

2.1.6.3. Measuring performance

Council evaluations should examine the performance of the full Council, its committees and individual Council members. The outcomes from these should be used to address performance issues, but should also form a part of the Nominations Committee's skills register and therefore be taken into account when considering the appointment of new Council members and the re-appointment of Council members.

2.1.7. Stakeholder engagement

Engagement can be defined in many ways and can include various parties:

- It may relate to how management works and interfaces with the Council.
- How the Council interacts with the Vice-Chancellor.
- How the Council and leadership team interact with stakeholders.
- How Council members interact with one other.

2.1.7.1. Management works and interfaces with Council

The Council works with management and ultimately defines the strategy in alignment with the mission, and management executes the strategic objectives and goals.

2.1.7.2. Council's interaction with the Vice-Chancellor

An effective Council governs in a constructive partnership with the Vice-Chancellor and recognises that the effectiveness of the Council and the Vice-Chancellor are interdependent. The Council and the Vice-Chancellor are partners in ensuring the University's strategy, mission and goals are carried out.

2.1.7.3. Council's and the leadership team's interaction with stakeholders

Stakeholders in this context include the government, staff, students and the community. Council and the leadership team should maintain effective relationships with these stakeholders.

2.1.7.4. Council members' interaction with one another

Council member interaction can make or break the dynamics of the Council. An effective Council encourages participation from all Council members, ensuring that each Council member's voice is heard, instead of reaching an outcome for the sake of consensus.

2.2. Strategy

2.2.1. Setting the strategy

Council is responsible for providing advice in determining the University's long-term goals and identifying the best approach for achieving those goals. The key responsibilities of Council relating to oversight of the University's strategy may include:

- Defining, reviewing and articulating the vision, mission and core values of the University.
- Providing leadership and direction in developing a Strategic Plan.
- Challenging management to determine that significant risks have been considered in development of the strategy.
- Assessing and improving the planning process.
- Confirming that key performance indicators (KPIs) and financial objectives are developed.
- Monitoring performance against set goals, indicators and objectives.

2.2.2. Monitoring the execution of the strategy

Once a strategy is defined, updates on specific strategic objectives should become part of the ongoing Council agenda. It is critical for Council and management to work together on the level of detail and the specifics of the information to be presented at each Council meeting. The objective is for the Council to continuously provide advice and be informed about the process.

Management should review financial and performance indicators with the Council, and the Council should assess progress and confirm alignment with the strategic goals and objectives.

Questions that may be worthwhile for the Council to consider as part of its standard meetings include:

- Is there a monitoring mechanism in place, and is timely feedback received regarding the University's progress against the strategy?
- What challenges are hindering implementation or execution of the strategy?
- Are the risks identified during the strategy planning phase still relevant?
- What is happening in the education sector that may impact on the University?
- What are the key performance indicators telling the Council?
- What information is management providing to support the original assumptions identified during strategy development?

2.3. Performance

Monitoring the University's performance is a critical function of the Council. An effective Council should monitor the overall performance of the University, including its operating, strategic and financial objectives.

A key aspect of the Council's oversight role is to actively monitor management's execution of approved plans, as well as the University's progress toward meeting its objectives.

2.3.1. Establishing the metrics

Council should establish a consistent method for receiving, reviewing and utilising the data received. Council should use various data points to monitor the University's performance, including financial and non-financial metrics, and sector and peer information, which can come from University reports, trend analyses, surveys, financial statements, sector benchmarks and audit opinions.

Some of the key responsibilities of the Council related to the oversight of the University's performance include:

- Understanding and agreeing on the University's key performance objectives and strategy.
- Providing leadership and direction in developing strategic, operating and financial plans.
- Developing and confirming that key performance indicators (KPIs) and financial objectives are monitored and achieved.

2.3.2. Operating and strategic objectives

Council has a significant role in providing strategic oversight. Council typically plays a less-active role in the development and execution of the annual financial and operating plans. The annual operating plan is typically developed by management and the contents are linked directly to the Strategic Plan. The annual operating plan tends to have a bottom-up approach, in contrast to the Strategic Plan, which tends to have a top-down approach. Council's role is to approve the annual operating plan and ensure that it is consistent with the Strategic Plan of the University.

Below are some questions for Council to consider when reviewing the University's annual operating plan and objectives:

- Is the plan achievable?
- Does the plan reflect the mission and goals of the University?
- Is it consistent with the Strategic Plan and will it contribute to the achievement of the goals in the Strategic Plan?
- Are the assumptions consistent between the annual operating plan and the financial plan?
- How is success measured for qualitative objectives?

Throughout the year, Council is responsible for monitoring the progress of the University in achieving its operating and strategic objectives.

2.3.3. Financial objectives

The University's financial budget and plan should be linked to the annual operating plan. The annual operating plan provides details on the University's objectives and how they will be achieved, while the financial plan identifies the revenue and expenses for the activities associated with each objective.

Council should use the financial plan to monitor the University's performance throughout the year. The primary responsibility for monitoring the financial plan typically falls to the Finance Committee.

Council should periodically review or receive a summary from the Finance Committee on the financial results. Financial information should also be provided in narrative descriptions, summaries, charts or graphs and in a consistent format to facilitate the review process.

2.4. Integrity

The Council's role in maintaining integrity includes working with the Vice-Chancellor to establish the right "tone at the top" (refer to 2.4.1), understanding compliance requirements, and establishing expectations for senior management, which then cascade through the University. Council should hold senior management accountable for meeting these expectations.

2.4.1. Establishing a Code of Conduct

The University should establish a Code of Conduct (the Code) that clearly articulates the University's commitment to ethical behaviour. The Code should address aspects such as:

- An introductory letter or statement from the senior leadership team that sets out the "tone at the top" and stresses the importance of compliance with the University's code of conduct.
- The University's mission statement, vision, values and guiding principles.
- An ethical decision framework to help employees make choices.
- A list of available resources for obtaining guidance and for good faith reporting of suspected misconduct.
- A list of any additional ethics and compliance resources.
- Enforcement and implementation mechanisms that address the notion of accountability and discipline for unethical behaviour.
- Generic examples of what constitutes acceptable and unacceptable behaviour.
- Key areas of risk unique to the University and the sector.

2.4.2. Maintaining integrity in the Council Chamber

Responsible for setting the "tone at the top," Council should also actively work towards improving the integrity in the Council Chamber through the following principles:

- Be active. Council should be informed about the University and vigorous in management oversight.
- Provide organisational leadership. The Council, working with management, should set the University's strategic direction, review financial objectives and establish a strong ethical tone.
- Comply with laws, regulations and ethics policies. The Council should confirm that procedures and practices are in place to prevent and detect illegal or unethical conduct and to permit appropriate and timely action should such conduct occur.
- Be informed, be transparent and listen. The Council should take steps to confirm that management discloses fair, complete, accurate and timely information and that the University maintains a two-way communication channel with the Council.
- Engage in continuous monitoring. The Council should establish and review metrics related to ethical reporting and violations and remain aware of new developments in corporate governance that can help improve practices and procedures.

2.5. Talent

An effective Council should select, evaluate and appropriately remunerate the Vice-Chancellor in addition to overseeing the talent programs of the University, particularly those related to executive leadership and potential successors to the Vice-Chancellor.

Talent management is also closely connected to risk management and should be embedded into risk management processes. Council should understand inherent talent risks and how management is monitoring, assessing and mitigating them.

Council should actively oversee the processes used by management in its role of determining that:

- Risks are mitigated.
- Potential talent is identified and continually assessed in accordance with the required skills and evolving circumstances of the University, the sector and business environment.

2.5.1 Council's role in relation to the Vice-Chancellor

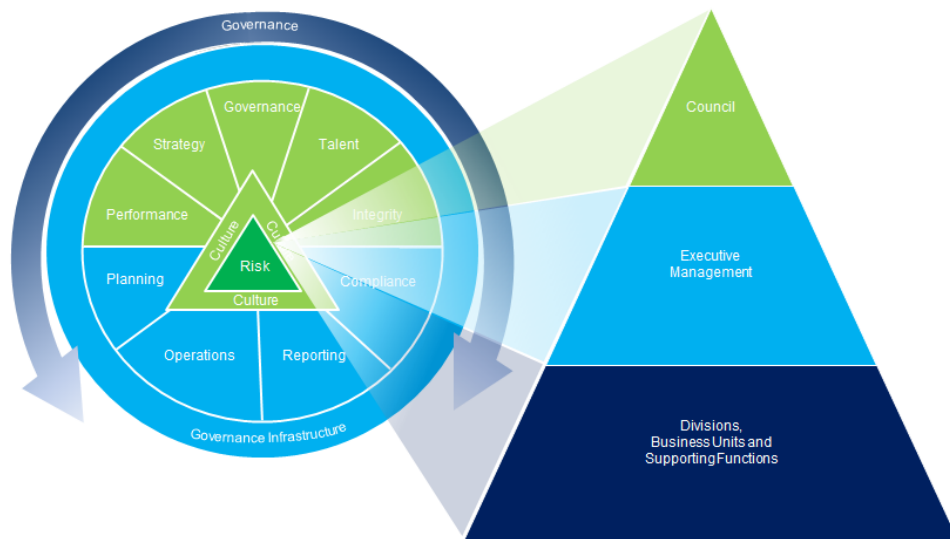
The most explicit role of the Council in the talent management process is that of selecting and evaluating the Vice-Chancellor and determining the Vice-Chancellor's compensation package. A critically important role of the Council, and the Chancellor in particular, is to be mindful of the health and welfare of the Vice-Chancellor.

The Council and, again, the Chancellor in particular, are responsible for supporting the transition of a Vice-Chancellor, according the outgoing Vice-Chancellor appropriate recognition for his or her achievements and ensuring a smooth transition to a newly appointed Vice-Chancellor.

2.6. Risk Governance

A risk-intelligent culture encompasses three levels of the University as demonstrated in Figure 2.

Figure 2: Linking the Governance Framework to the Risk Intelligent Enterprise



The bottom level comprises the business-unit and supporting functions, which are essential because they identify and continually assess risks. The management team and senior leadership team form the middle level. The Vice-Chancellor has overall responsibility for risk management. The top level is the Council, which sets the tone for prioritising risk and satisfying itself that management is putting effective programs and policies in place. It is essential for all of these parties to communicate and work together.

The characteristics of a University with a strong risk culture include:

- Commonality of purpose, values and ethics.
- Universal adoption and application.
- Learning organisation that emphasises risk culture.
- Timely and honest communications.
- Understanding of the value of effective risk management.
- Responsibility and accountability, both individually and collectively.
- Encouraging an environment of constructive challenge.

APPENDIX D - ANU Governance Assessment

1. Assessment against the Framework

The University's performance against each of the following six domains has been assessed using the following scale.

Legend	Explanation	
Mature	The current environment at ANU addresses key aspects of the Better Practice University Governance Assessment Framework . Any findings noted during our assessment were minor with no significant impact on the effectiveness of governance arrangements at ANU.	
Evident	The current environment at ANU addresses most aspects of the Better Practice University Governance Assessment Framework . Findings noted during our assessment were important with some impact on the effectiveness of governance arrangements at ANU	
Not Evident	The current environment at ANU is not reflective of the Better Practice University Governance Assessment Framework .	

Governance

1.1.1 Roles and responsibilities

1.1.1.1 Role of Council

Overall Rating: Mature 	
Better Practice:	Observations:
- The primary responsibilities of the Council are to: - Appoint the Chancellor. - Appoint the Vice-Chancellor as the Chief Executive Officer of the University and monitor his or her performance. - Set the University's strategic goals and monitor progress towards the achievement of those goals. - Oversee academic activities and management effectiveness. - Ensure responsible financial and risk management.	- The Act specifies the Council as the governing authority of the University and sets out the powers of Council. - The Council's powers in sub-section 9(1) of the ANU Act, which refers to Council having "the entire control and management of the University", does not promote clarity regarding the roles and responsibilities of Council. - The Council's primary responsibilities as detailed within the Council Members' Handbook have been informed by the <i>Voluntary Code of Best Practice for the Governance of Australian Universities</i>. Based on the extensive detail provided it may be interpreted that these responsibilities are the only responsibilities of Council.

Finding 1: The statement regarding Council's primary responsibilities, as set out in the Council Members' Handbook, does not clearly indicate that these are not the only responsibilities of the Council. Based on the extensive detail provided it may be interpreted that these responsibilities are the only responsibilities of Council.

1.1.2 Council composition, skills sets and competency

1.1.2.1 Size

Overall Rating:

Mature



Better Practice:	Observations:
• There is some flexibility regarding membership and the number of members to meet the University's specific requirements which may change from time to time. • Council representation is reflective of the various stakeholders involved with the University including the government, executive management, staff, students and the community: – A maximum of three <i>ex-officio</i> members which include the Chancellor, Vice-Chancellor and usually the Chair of the Academic Board or equivalent. – The University Council can appoint up to half of the members (excluding <i>ex-officio</i>) members with the requisite skills and experience to its Council. Council has the option to appoint staff and students as Council members provided that they have the necessary skills and experience. Staff and student members must be appointed <i>ad personam</i> or elected <i>ad personam</i>. – The number of government-appointed members must be equal to or more than the number of members appointed by the University's Council, provided that the total number of Council members must not exceed the total agreed to by the University.	• There are currently 15 members of Council: – Two are <i>ex officio</i> (Chancellor and Vice-Chancellor). – Six are staff or students (three academic staff, one general staff member, one postgraduate student, one undergraduate student). – Seven are appointed by the Minister on the recommendation of the Nominations Committee. • The membership is no longer in line with sub-section 10(1) of the ANU Act due to a change in organisational structure. • The Chair of the Academic Board is not specified as an <i>ex officio</i> member and is not a member of Council. • Student members are the elected heads of ANU's undergraduate and postgraduate student associations and are therefore not elected or appointed to Council <i>ad personam</i>. Students usually serve as Council members for only one year. • The Nominations Committee recommends to the Minister the appointment of the seven external members of Council. The Nominations Committee is guided by the Act in relation to the requirements for external members.

Finding 2: The ANU Act is currently based on a particular organisational structure of the University, which has changed over time, making certain provisions of the Act obsolete.

1.1.2.2 Council appointment process

Overall Rating:

Mature



Better Practice:	Observations:
- The appointment process for University-appointed and Government-appointed members follows a formal appointment structure, after taking into account the requisite skills sets and experience required. - The Nominations Committee plays a key role in this appointment process, maintaining a skills register.	- The Council Members' Handbook outlines the process by which Council members are appointed, the required composition of Council and the broad skill sets required. The rationale for Council nominations is clearly documented during the nominations process, by the Nominations Committee. - Student members are the elected heads of ANU's undergraduate and postgraduate student associations and are not elected or appointed to Council <i>ad personam</i>. This means that students usually serve as Council members for only one year. - The Nominations Committee recommends to the Minister the appointment of the seven external members of Council. The Nominations Committee is guided by the Act in relation to the requirements for external members.
Finding 3: Students members are not elected or appointed <i>ad personam</i>.	

1.1.2.3 Skills sets

Overall Rating:

Evident



Better Practice:	Observations:
• Council collectively has the specific skills and experience required to provide value to the governance of the University. These collective skills include, but should not be limited to: – Financial expertise (mandatory for a minimum of two members). – Commercial expertise (mandatory for at least one member). – Understanding of risk management. – Legal expertise. – University and/or education sector experience. – Information technology expertise. – Understanding of environmental and sustainability issues.	• The ANU Act specifies that two members must have financial expertise and that at least one member must have relevant commercial experience. • Skills requirements for Council members and committee members are not formally articulated beyond the provisions contained within the Act and it is therefore not clear whether ANU has undertaken an assessment of the skills and experience that is required from its Council members.
Finding 4: The Nominations Committee does not have a skills register and it is therefore unclear whether Council members have the required skills sets to make an effective contribution to Council.	

1.1.2.4 Diversity

Overall Rating: Mature 	
Better Practice: Council members must have diversity in terms of gender, ethnicity, nationality and age.	Observations: - The Nominations Committee has developed an appointment strategy to: - Achieve gender equity. - Ensure equal representation from across the States and Territories. - Ensure an Indigenous member sits on Council. A number of notable milestones have been achieved with the Council now having an Indigenous member, greater gender diversity and greater representation across the States and Territories.

1.1.2.5 Term of appointment

Overall Rating: Mature 	
Better Practice: - Council, through the Nominations Committee, agrees to appropriate terms of appointment for Council members and ensures that succession planning is in place in the interests of continuity and renewal. - The appointment period should be between three to four years, with no Council member to serve more than two terms.	Observations: - The Nominations Committee is responsible for specifying the terms of appointment for each Council member. The current appointment period is four years and Council members do not usually serve more than two terms. - The Nominations Committee is also responsible for succession planning to ensure continuity and renewal of members. A succession plan is in place and is regularly reviewed by the Nominations Committee.

1.1.2.6 Independence

Overall Rating:

Mature



Better Practice:	Observations:
The Council consists of a majority of independent members. An independent member is a person who is not employed by the University, or a current student of the University, and who is free of any business or other relationship that could materially interfere with the independent exercise of his or her judgement.	- Excluding the Chancellor and Vice-Chancellor, the Council currently appoints six members; the Minister appoints seven members. There are currently eight independent members and therefore the majority of membership is independent. - Members are required to make a disclosure to Council if a conflict of interest arises. Once a member makes a disclosure to Council, this is recorded in the minutes of the meeting and the Council member may not be present for deliberations or take part in decision-making relevant to that disclosure. - A Deed of Indemnity is in place for Council Members.

1.1.2.7 Controlled Entities

Overall Rating:

Evident



Better Practice:	Observations:
Council should approve the business case to enter into a controlled entity arrangement and should play an active role in overseeing the performance of these entities.	There are currently no formal governance procedures in place regarding controlled entities; financial statements are provided to Council as part of year-end financial reporting.

Finding 5: Formal governance procedures have not been developed to clearly articulate Council's oversight responsibilities in relation to controlled entities beyond the financial performance articulated in the annual accounts.

1.1.3 Council remuneration

Overall Rating:

Not evident



Better Practice:	Observations:
- Council members, who are not employees of the University, are remunerated in accordance with the size and complexity of the University and having regard to the additional responsibilities borne by the Chancellor and Council members who are also Chairs or members of key committees. - Council members who are employees of the University should be provided with time release to perform their responsibilities as Council members.	Council members are not currently remunerated; the Chancellor receives a nominal annual payment.

Finding 6: Council members are not currently remunerated.

1.1.4 Committee structures

1.1.4.1 Committee Structures

Overall Rating:

Mature



Better Practice:	Observations:
The Council delegates functions and powers to members of a committee consisting of members of the Council or members of the Council and other persons. The use of committees allows the Council to facilitate focused decision making regarding particular matters critical to the stewardship of the University. It also allows the Council to access the expertise of those with knowledge and skills focused on a particular area.	- Council is assisted by the following committees: - Audit and Risk Management Committee. - Committee on Conditions and Appointment of the Vice-Chancellor. - Emergency Appointment (Vice-Chancellor) Committee. - Finance Committee. - Nominations Committee of Council. - Honorary Degrees Committee. - The nature and consistency of the Terms of References for these committees varies and requires greater consistency. - The Audit and Risk Management Committee has an extensive Charter but no Terms of

Better Practice:	Observations:
	Reference.

Finding 7: There is no consistency regarding the Terms of Reference for each committee.

1.1.4.2 The Audit and Risk Committee

Overall Rating: Mature 	
Better Practice:	Observations:
- The key responsibilities of the Audit and Risk Committee include providing independent assurance and advice in the following areas: - Risk management. - Internal control system. - Financial statements. - Compliance requirements. - Internal audit. - External audit. - Other relevant functions including review of the University's governance arrangement and performance framework.	- An Audit and Risk Management Committee has been established. Membership of the Committee includes a Chair (who may be a non-executive member of the Council, but not the Chancellor), a member of Council (who may not be a student nor an ANU employee other than a College Head), up to four independent members (who may not be a member of Council or an ANU employee or student) and the Chair of the Finance Committee (<i>ex officio</i>). - The Audit and Risk Management Charter specifies that the members, taken collectively, will have a broad range of skills and experience relevant to the operations of the ANU. At least one member of the Audit and Risk Management Committee should have accounting or related financial management experience with an understanding of accounting and auditing standards in a public sector environment. - The Audit and Risk Management Committee's responsibilities are documented in its Charter, however the Committee does not have Terms of Reference consistent with those of other committees.

Finding 8: The Audit and Risk Management Committee currently has only a Charter in place.

1.1.4.3 The Nominations Committee

Overall Rating:

Evident



Better Practice:	Observations:
• Key responsibilities of the Nominations Committee include: – Identifying the skills and experience that will be needed to complement that of the other members of the Council. – Identifying persons who may be suitable for appointment as such a member. – Recommending to Council the appointment of the University-appointed members. Council may take the view that categories of staff and students have the necessary skills and experience and should therefore be appointed, but such members should be elected or appointed <i>ad personam</i>. – Recommending to the Minister suitable members to be appointed to the University's Council. Recommendations to the Minister should be restricted to at least one more than the number of vacant positions on the Council. The Chancellor, together with the Chair of the Nominations Committee, should be responsible for direct communication with the Minister and his or her office in relation to nominations being presented.	• The Council Members' Handbook outlines the process by which Council members are appointed, the required composition of Council and the broad skill sets required. The rationale for Council nominations is clearly documented during the nominations process, by the Nominations Committee. • Student members are the elected heads of ANU's undergraduate and postgraduate student associations and are therefore not elected or appointed to Council <i>ad personam</i>. This means that students usually serve as Council members for only one year. • The Nominations Committee recommends to the Minister the appointment of the seven external members of Council. The Nominations Committee is guided by the Act in relation to the requirements for external members. This requires that at least two members must have a level of relevant financial expertise, at least one member must have a high level of relevant commercial expertise and there should be a desirable balance of skills, expertise and gender amongst the Council.
Finding 3: Student members are not elected <i>ad personam</i>. Finding 4: The Nominations Committee does not have a skills register.	

1.1.4.4 The Finance Committee

Overall Rating:

Evident



Better Practice:	Observations:
- Key responsibilities of the Finance Committee include: - Making recommendations relating to the University's financial and business affairs. - Providing advice on the investment objectives of the University.	- Based on the Finance Committee's Terms of Reference, it is responsible for advising and assisting the Council and the Vice-Chancellor, through delegated powers, on matters related to the finances of the University. - The Finance Committee is responsible for providing investment advice through the Investment Advisory Committee.
Finding 9: The Corporate and Governance Risk Office does not currently have responsibility for governance and administrative support to the Investment Advisory Committee.	

1.1.4.5 The Remuneration Committee

Overall Rating:

Evident



Better Practice:	Observations:
- Key responsibilities of the Remuneration Committee include: - Reviewing the performance of the Vice-Chancellor and other senior management on an annual basis. - Reviewing and determining the level of remuneration of the position of Vice-Chancellor and other senior management on an annual basis.	- The University currently does not have a Remuneration Committee in place, instead it has a Committee of Conditions of Appointment of the Vice-Chancellor. - Based on the Committee's Terms of Reference, the Committee is responsible for the determining and reviewing the conditions of appointment (including salary) of the Vice-Chancellor.
Finding 10: The University does not have a Remuneration Committee.	

1.1.5 Council induction and on-going education

Overall Rating:

Evident



Better Practice:	Observations:
Professional development programs are an integral part of the development and enhancement of the capacity of Council members to fulfil their responsibilities. These should include both Induction programs for new Council members and ongoing Professional Development programs that are reviewed on a periodic basis.	- The induction pack is comprehensive and includes the ANU's Code of Conduct, copies of the ANU and Public Governance, Performance and Accountability Acts and the Council Members' Handbook, an outline of the conduct expected of members as well as their role and responsibilities. The pack does not include material relating to the higher education sector in general which would assist with the induction of new members who are not familiar with the sector. - One-on-one meetings are organised with the Chancellor and Senior Executive as appropriate as part of the induction process. - Professional development support is provided if a skills gap is identified during a Council member's performance evaluation, however not as a course of action at the time of induction or prior to. Council members are also able to attend formal training sessions and informal professional development activities.
Finding 11: The current induction pack does not include material in relation to the higher education sector. Finding 12: The skills and training requirements of Council members are not assessed when the Council member is appointed.	

1.1.6 Council effectiveness

1.1.6.1 Terms of reference

Overall Rating:

Mature



Better Practice:	Observations:
Council has in place documented terms of reference, similar to that of Council Committees, that outlines its roles and responsibilities.	The Council Members Handbook serves as Terms of Reference to Council. The Council's primary responsibilities as detailed within the Council Members' Handbook have been informed by the <i>Voluntary Code of Best Practice for the Governance of Australian Universities</i>.

1.1.6.2 Conduct of Council meetings

Overall Rating:

Mature



Better Practice:	Observations:
- For Council meetings to be effective, the following should be in place: - The Council should meet regularly to effectively fulfil its responsibility and duties. - The agenda setting process should allow for appropriate issues to be raised as necessary, including the need for <i>in-camera</i> sessions. - Sufficient time should be scheduled for Council meetings. - Council members should receive the papers timeously, and the papers should provide clarity regarding the recommendation being put forward to the Council. - Council members should have unrestricted access to the information needed to support key decisions and to perform their role effectively. - Council meetings should be conducted ethically and in a manner that encourages open discussion, healthy debate, and allows each Council member to participate in discussion and decisions. - Council meeting minutes should be appropriately and timely documented and	- The Council Members' Handbook outlines the process for establishing each Council Meeting. - The Council usually meets six times a year. Council meeting dates for 2014 and 2015 are currently available via the ANU website. The date of the Council Members' retreat has been identified for 2015. - The Council Members' Handbook stipulates that the order of business on the Council agenda paper should normally be determined two weeks prior to the relevant meeting of Council. - The Council agenda is set on a two year basis. Additional items proposed for the agenda are sent to the Corporate Governance and Risk Office for inclusion. - Substantial documentation is provided per item per Council meeting and detailed minutes are maintained. - The voting process is stipulated in the Council Members' Handbook, as is quorum. However, in general terms, Council decisions are not the subject of voting. Council

Better Practice:	Observations:
distributed after the meeting.	prefers to reach consensus as a result of debate. The Council Members' Handbook stipulates that Council members are entitled to any information they need or require from the University to exercise their functions and to fulfil their duties as Directors. This includes independent legal advice at the University's expense subject to prior approval from the Chancellor.

1.1.6.3 Measuring performance

Overall Rating:

Evident



Better Practice:	Observations:
Council evaluations examine the performance of the full Council, its committees and individual Council members. The outcomes from these are used to address performance issues, but also form a part of the Nominations Committee's skills register and therefore taken into account when considering the appointment of new Council members and the re-appointment of Council members.	- The Chancellor evaluates the performance of individual Council members on a biennial basis through conducting one-on-one confidential conversations. - A report is tabled with Council for discussion; the overall performance of the Council and its Committees is not evaluated.

Finding 13: Council does not assess its overall performance or that of its Committees.

1.1.7 Stakeholder engagement

1.1.7.1 Stakeholder Engagement

Overall Rating:

Evident



Better Practice:

- An effective Council governs in a constructive partnership with the Vice-Chancellor and recognises that the effectiveness of the Council and the Vice-Chancellor are interdependent. The Council and the Vice-Chancellor are partners in ensuring the University's strategy, mission and goals are carried out.
- The Council works with management and ultimately defines the strategy in alignment with the mission, and management executes the strategic objectives and goals.

Observations:

- The Vice-Chancellor is a member of Council and works together with the Council in delivering on its roles and responsibilities.
- The effectiveness of Council is monitored through the Chancellor evaluating the performance of individual Council members on a biennial basis.
- Senior Executive of the University are permitted to attend Council meetings and are permitted to provide clarification and insight where required by Council.

Finding 13: Council does not assess its overall performance or that of its Committees.

1.2 Strategy

1.2.1 Setting the strategy

Overall Rating: Mature 	
Better Practice:	Observations:
• Council is responsible for providing advice in determining the University's long-term goals and identifying the best approach for achieving those goals. The key responsibilities of Council relating to oversight of the University's strategy may include: – Defining, reviewing and articulating the vision, mission and core values of the University. – Providing leadership and direction in developing a strategic plan. – Challenging management to determine that significant risks have been considered in development of the strategy. – Assessing and improving the planning process. – Confirming that key performance indicators (KPIs) and financial objectives are developed. – Monitoring performance against set goals, indicators and objectives.	• Council is actively involved in the development of the University's Strategic Plan and has the ultimate responsibility to approve the Plan and oversee its implementation.

1.2.2 Monitoring the execution of the strategy

Overall Rating:

Mature



Better Practice:	Observations:
• Updates on specific strategic objectives are part of the ongoing Council agenda. It is critical for Council and management to work together on the level of detail and the specifics of the information to be presented at each Council meeting. The objective is for the Council to continuously provide advice and be informed about the process. • Management should review financial and performance indicators with the Council, and the Council should assess progress and confirm alignment with the strategic goals and objectives.	• Delivery against the strategy is discussed at Council meetings as part of the pre-set two year agenda process. • KPIs have been established against each strategic pillar and reporting against these KPIs takes place on a regular basis.

1.3 Performance

1.3.1 Establishing the metrics

Overall Rating: Mature 	
Better Practice: Council has established a consistent method for receiving, reviewing and utilising the data received. Council uses various data points to monitor the University's performance, including financial and non-financial metrics, and sector and peer information, which can come from University reports, trend analyses, surveys, financial statements, sector benchmarks and audit opinions.	Observations: - Council regularly receives reporting on both financial and non-financial KPIs. - A project is currently underway to further develop the reporting framework for the University, including Council.

1.3.2 Operational and strategic objectives

Overall Rating: Mature 	
Better Practice: - Council has a significant role in providing strategic oversight. Council typically plays a less-active role in the development and execution of the annual financial and operating plans. The annual operating plan is typically developed by management and the contents are linked directly to the Strategic Plan. - The annual operating plan tends to have a bottom-up approach, in contrast to the Strategic Plan, which tends to have a top-down approach. Council's role is to approve the annual operating plan and ensure it is consistent with the Strategic Plan of the University. - Throughout the year, Council is responsible for monitoring the progress of the University in achieving its operating and strategic objectives.	Observations: - Council regularly receives reporting on both financial and non-financial KPIs. - A project is currently underway to further develop the reporting framework for the University, including Council.

1.3.3 Financial objectives

Overall Rating:

Mature



Better Practice:	Observations:
• The University's financial budget and plan should be linked to the annual operating plan. The annual operating plan provides details on the University's objectives and how they will be achieved, while the financial plan identifies the revenue and expenses for the activities associated with each objective. • Council should use the financial plan to monitor the University's performance throughout the year. The primary responsibility for monitoring the financial plan typically falls to the Finance Committee. • Council should periodically review or receive a summary from the Finance Committee on the financial results. Financial information should also be provided in narrative descriptions, summaries, charts or graphs and in a consistent format to facilitate the review process.	• Council regularly receives reporting on both financial and non-financial KPIs. • A project is currently underway to further develop the reporting framework for the University, including Council.

1.4 Integrity

1.4.1 Establishing a Code of Conduct

Overall Rating: Mature 	
Better Practice:	Observations:
• The University should establish a Code of Conduct (the Code) that clearly articulates the University's commitment to ethical behaviour. The Code should address aspects such as: – An introductory letter or statement from the senior leadership team that sets out the "tone at the top" and stresses the importance of compliance with the University's Code of Conduct. – The University's mission statement, vision, values and guiding principles. – An ethical decision framework to help employees make choices. – A list of available resources for obtaining guidance and for good faith reporting of suspected misconduct. – A list of any additional ethics and compliance resources. – Enforcement and implementation mechanisms that address the notion of accountability and discipline for unethical behaviour. – Generic examples of what constitutes acceptable and unacceptable behaviour. – Key areas of risk unique to the University and the sector.	• The University has a well-established Code of Conduct that communicates the University's ethical values and the standards against which Council members and staff are required to operate. • The Code of Conduct is currently not referenced to in the Governance section of the University's website.

Finding 14: The Code of Conduct is no referenced in the Governance section of the University's website.

1.4.2 Maintaining integrity in the Council Chamber

Overall Rating:

Mature



Better Practice:	Observations:
- Responsible for setting the “tone at the top,” Council should also actively work towards improving the integrity in the Council Chamber through the following principles: - Be active. Council should be informed about the University and vigorous in management oversight. - Provide organisational leadership. The Council, working with management, should set the University’s strategic direction, review financial objectives and establish a strong ethical tone. - Comply with laws, regulations and ethics policies. The Council should confirm that procedures and practices are in place to prevent and detect illegal or unethical conduct and to permit appropriate and timely action should such conduct occur. - Be informed, be transparent and listen. The Council should take steps to confirm that management discloses fair, complete, accurate and timely information and that the University maintains a two-way communication channel with the Council. - Engage in continuous monitoring. The Council should establish and review metrics related to ethical reporting and violations and remain aware of new developments in corporate governance that can help improve practices and procedures.	- The Council Members’ Handbook states the Council is committed to ensuring effective governance practices which reflect accountability, transparency, professional integrity, academic freedom and ethical behaviour based on trust and intellectual honest. - Council meetings are conducted in accordance with the requirements of the Council Members’ Handbook.

1.5 Talent

1.5.1 Council's role in relation to the Vice-Chancellor

Overall Rating:

Mature



Better Practice:	Observations:
• The most explicit role of the Council in the talent management process is that of selecting and evaluating the Vice-Chancellor and determining the Vice-Chancellor's compensation package. • The Council, and the Chancellor in particular, are responsible for supporting the transition of the Vice-Chancellor, according an outgoing Vice-Chancellor appropriate recognition for his or her achievements and ensuring a smooth transition to a newly appointed Vice-Chancellor.	• The Terms of Reference of the Committee on Conditions of Appointment of the Vice-Chancellor's state that the Committee is responsible for determining the conditions of appointment (including salary) of the Vice-Chancellor. • The current terms of the office of the Chancellor and Vice-Chancellor are due to expire at around the same time.

Finding 15: The current terms of the office of the Chancellor and Vice-Chancellor are due to expire at around the same time.

1.6 Risk Governance

Overall Rating:

Mature



Better Practice:	Observations:
• A risk-intelligent culture encompasses three levels of the University. The bottom level comprises the business-unit and supporting functions, which are essential because they identify and continually assess risks. The management team and senior leadership team form the middle level. The Vice-Chancellor has overall responsibility for risk management. The top level is the Council, which sets the tone for prioritising risk and satisfying itself that management is putting effective programs and policies in place. It is essential for all of these parties to communicate and work together. • The characteristics of a University with a strong risk culture include: – Commonality of purpose, values and ethics. – Universal adoption and application. – Learning organisation that emphasises risk culture. – Timely and honest communications. – Understanding of the value of effective risk management. – Responsibility and accountability, both individually and collectively. – Encouraging an environment of constructive challenge.	• The ANU has a Risk Management Policy & Procedure and an entity-wide risk management framework. The Audit and Risk Committee has direct oversight of risk management within the University and provides regular risk updates to Council. • ANU's Risk Management procedure outlines management's responsibility for internal control including the University Executive, ANU Deans, Service Division Directors and/or Heads of Budget Units, Heads of Controlled Entities, and entities that are derived from the legal status of the University.

APPENDIX E – Stakeholder Consultation

In addition to Reference Group meetings, the following people were formally consulted:

The Hon Gareth Evans AC QC, Chancellor

15 September, Professor Sally Walker
3 November, Professor Sally Walker
26 November, Professor Sally Walker

Professor Ian Young AO, Vice-Chancellor

8 September, Professor Sally Walker
24 October, Professor Sally Walker
3 November (phone), Colette Rogers, Professor Sally Walker
19 November, Colette Rogers, Elma von Wielligh-Louw, Professor Sally Walker

Mr Chris Grange, Executive Director (Administration and Planning)

19 November, Colette Rogers, Elma von Wielligh-Louw, Professor Sally Walker

Ms Robin Hughes AO, Pro-Chancellor (appointed member)

22 October (phone), Professor Sally Walker

Dr Doug McTaggart, Council Member (appointed member)

15 October (phone), Kate Jolly, Professor Sally Walker

Professor Suzanne Cory AC, Council Member (appointed member)

24 October (phone), Colette Rogers

Mr Patrick Dobson, Council Member (appointed member)

17 October (phone), Colette Rogers

Dr Karen Hussey, Council Member (academic staff member)

17 October (phone), Colette Rogers

Ms Naomi Flutter, Council Member (appointed member)

23 October (phone), Professor Sally Walker

Mr David Miles AM, Council Member (appointed member)

23 October (phone), Professor Sally Walker

Mr Graeme Samuel AC, Council Member (appointed member)

16 October (phone), Kate Jolly, Professor Sally Walker

Professor John Close, Council Member (academic staff member)

13 November (phone), Drew Davidson

Professor Tim Senden, Council Member (academic staff member)

22 October (phone), Professor Sally Walker

Mr Matthew King, Council Member (general staff member)

29 October (phone), Professor Sally Walker

Mr Cameron Wilson, Council Member (undergrad student)

23 October (phone), Professor Sally Walker

Mr Ben Niles, Council Member (postgrad student)
27 October (phone), Professor Sally Walker

All Council Members
3 October meeting of Council, Colette Rogers and Professor Sally Walker

Ms Ilana Atlas, former Council Member (appointed member)
23 October (phone), Professor Sally Walker

Ms Martine Letts, former Council Member (appointed member)
23 October (phone), Professor Sally Walker

Dr Vince FitzGerald, former Council Member (appointed member)
24 October (phone), Colette Rogers

Professor Kiaran Kirk, former Council Member (Dean member); Professor Ann McGrath, former Council Member (academic staff member); Dr Royston Gustavson, former Council Member (academic staff member)
3 October, Colette Rogers, Professor Sally Walker

Mr Areti Metuamata, former Council Member (postgrad student member); Mr Arjuna Mohottala, former Council Member (postgrad student)
3 October, Colette Rogers, Professor Sally Walker

Mr Tully Fletcher, former Council Member (undergrad student member)
23 October (phone) Professor Sally Walker

Ms Aleks Sladojevic, former Council Member (undergrad student member)
23 October (phone), Drew Davidson, Kate Jolly

Professor Nick Glasgow, Chair of Academic Board, and Professor Fiona Wheeler, former Chair of Academic Board
24 October, Professor Sally Walker

Ms Kate Molloy, Director, Corporate Governance and Risk Office and Mr Andrew Heath, Manager, Corporate Governance and Policy, Corporate Governance and Risk Office
24 October, Professor Sally Walker

Ms Kate Molloy, Director, Corporate Governance and Risk Office and Mr Andrew Heath, Manager, Corporate Governance and Policy, Corporate Governance and Risk Office
5 November, Drew Davidson and Kate Jolly

Ms Kate Molloy, Director, Corporate Governance and Risk Office
19 November, Colette Rogers, Elma von Wielligh-Louw, Professor Sally Walker
27 November, Professor Sally Walker

Professor Marnie Hughes-Warrington, *Deputy Vice-Chancellor (Academic)*
4 November (phone), Professor Sally Walker

Professor Margaret Harding, Deputy Vice-Chancellor (Research)
6 November (phone), Professor Sally Walker

APPENDIX F - Maintaining ANU's Distinctive Research Excellence in Disciplines of National Importance: The Significance of the National Institutes Grant

Summary

- 1) *It is unequivocally in Australia's national interest to have a diverse cohort of universities of stellar international reputation.*
- 2) *ANU was established by the Commonwealth as not just another regional university, but with that larger national interest expressly in mind. Its Act, from the outset, has focused on ANU's role in generating research "of national importance to Australia".*
- 3) *ANU has fully delivered on these expectations, in both its international reputation and ranking, and in the way in which its research has been concentrated, at a high level of excellence, in particular disciplines of national importance.*
- 4) *It is through the National Institutes Grant (NIG), that ANU has been able to sustain critical mass in areas of national importance which are not pursued at all, or at this level of excellence, in other Australian universities. This situation has been true in the past and will continue to be the case for the foreseeable future.*
- 5) *The NIG enables ANU to attract and retain world class researches: without the NIG, ANU's comparative world standing would erode, with wider reputational consequences for Australia.*

1. Australia's National Interest in Having a Diverse Cohort of Stellar Universities

Modern, affluent and progressive nations have societies and economies dependent on world-class research universities. The United States, Northern Europe and Scandinavia are clear examples of the importance of research excellence. These outstanding research environments underpin economic development, social harmony and act as a magnet for skilled migration and international investment.

Importantly, these nations also have diversity in their research universities. They include both large teaching and research institutions and smaller, more focused research universities. Australia has a research monoculture with, the ANU excepted, all our research universities being large teaching and research institutions driven by student revenue. Although student numbers have provided an effective funding base for these institutions, it also means that Australia risks losing disciplines of importance that do not thrive in such an environment.

Australia benefits from having a diverse cohort of stellar quality universities in three distinct ways: the direct contribution made to our economy and society by world-quality researchers; the foreign investment generated by perception of Australia having a world-class research environment; and the trade benefits of international education, significantly advanced by having a number of educational institutions of very high international reputation.

The Hon Tony Abbott recognized the importance to the national interest of having such a cohort in his address to the Universities Australia Higher Education Conference on 28 February 2013, when he said:

According to the Shanghai Jiao Tong University's 2012 Academic Ranking of Universities – the Olympics of higher education, I'm told – five of our universities made it into the world top 100, putting us third as a nation, behind only the United States and the United Kingdom, in this academic gold medal count.

2. ANU's Comparative Excellence Generally

Despite its relatively small size (the smallest of the Go8 universities) ANU is regularly ranked first or second in Australia, and in the top 50 universities in the world,⁸⁶ a remarkable achievement given that it does not have a large medical presence.

ANU has produced more Nobel Prize winners than any other Australian university – 5 of the 11 Australian winners, including the most recent, Brian Schmidt. Despite being less than half the size of most Go8 universities, ANU has more Fellows of the learned academies, and more disciplines ranked in the top 20 in the world⁸⁷, than any other Australian university.

A major measure of ANU's comparative excellence is that it regularly performs at a quite outstanding level in grants awarded by the Australian Research Council. Funding awarded to ANU, per member of academic staff in the various major schemes, is significantly above the Go8 average (figures averaged over the last three years):

- o ARC Discovery Grants – double the Go8 average and 40% higher than the next best performer (UQ)
- o ARC Laureate Fellows – 2.8 times higher than Go8 average and 112% higher than the next best performer (Monash)
- o ARC Future Fellows – 1.5 times higher than Go8 average and 10% higher than next best performer (UQ)

These figures clearly show that ANU performance in its areas of key focus (i.e. non-medically related research) puts it in a class of its own within Australia.

3. ANU's Comparative Excellence in Areas of Research Concentration of National Importance

Areas of research concentration take many years to develop, and require a degree of funding stability to reach critical mass and international excellence. But dynamism is required as well as stability: a capacity to change to accommodate international discipline expectations and national needs, a process which requires some funding flexibility. The particular areas listed below are those areas of research concentration and excellence, all of national importance, where ANU has unequivocally led the field in Australia, and in some cases the world.

ANU recognizes that it is not capable of building distinctive critical mass in every research area of national significance, and continues to make hard strategic choices. A clear example is biomedical research. All Go8 Universities except ANU see medical research as fundamental and have built critical mass on the back of major investments by respective State Governments through medical research institutes. ANU does not try to duplicate these activities as it has no strategic advantage in these areas – even though this disadvantages ANU in many of the national and international ranking systems.

(a) Asia and the Pacific

Deep understanding of our region – its history, society, culture, politics, economics and language – is critically important to Australia in this Asian century. The College of Asia and the Pacific has grown today to host the largest assembly of regional experts in the English-speaking world. It has the widest range of courses on Asia and the Pacific in Australia, and offers the largest number of Asian and Pacific language programs.

⁸⁶ In the latest QS World University Rankings ANU was 25th, and first in Australia; and in the Times Higher Education University Rankings 45th and second in Australia. In the third major international index, the Academic Ranking of World Universities (formerly Shanghai Jiao Tong), ANU placed 74th (and again second in Australia).

⁸⁷ 2014 QS rankings – ANU 13 disciplines in top 20 compared to the University of Melbourne with 10.

Regional areas of strength include: China, Japan, Indonesia and the Pacific Islands. ANU boasts the largest concentration of scholars of China of any English speaking university in the world: clustered around the Australia Centre for China in the World, this provides Australia with a unique resource in interacting with our largest trading partner. The Australia Japan Research Centre is the national research concentration for study of Japan. This was recently highlighted in the joint communique issued by Prime Ministers Abbott and Abe. ANU is nationally recognised for its concentration of Indonesianists, with a particular concentration on the economics of Australia's largest neighbour. ANU expertise in the Pacific is unrivalled in Australia, with a particular focus on Papua New Guinea and Melanesia. For many years ANU expertise in the region has been an important resource in the delivery of aid programs in the region.

(b) Asian Languages

The study of Asian languages has been in decline across our universities – unhappily, at a time when their understanding has never been more important for Australia's engagement with this region so crucial to both our future prosperity and security. Despite this, ANU maintains both a depth and breadth of Asian languages found at no other Australian university. Among them: Chinese (Mandarin and Cantonese), Japanese, Indonesian, Burmese, Melanesian Pidgin and other Pacific languages, Thai, Vietnamese, Korean, Hindi, Sanskrit, Tetum, Urdu, Arabic, Persian and Turkish.

(c) Public Policy

ANU has a long history of applying both its unique research strengths and its national identity to the development of national public policy, and generally enhancing the quality of policy debate. ANU academics such as: Bruce Chapman, Ross Garnaut, Des Ball, Hugh White and Warwick McKibbin have been household names in this respect. In recent years ANU has been investing significantly in developing its public policy research and outreach capability – with the establishment of the Crawford School of Public Policy and a host of cross-institutional research clusters including the HC Coombs Policy Forum, the Social Policy Institute, the Tax and Transfer Policy Institute, the Australian Centre for Biosecurity and Environmental Economics, the Centre for Applied Macroeconomic Analysis, the Development Policy Centre, the Climate Change Institute and the Energy Change institute.

(d) Humanities and Social Sciences

ANU is unique in both the size and quality of its Humanities and Social Sciences (including Asia Pacific) research capability. This underpins the cultural base of the nation. Uniquely, a number of these disciplines are ranked in the top 20 in the world (Philosophy, Politics, Linguistics, Sociology, Economics and History).

(e) Astronomy and Space Science

The ANU Research School of Astronomy and Astrophysics (RSAA) is a world leading astronomical research centre. The recipient of the 2011 Nobel Prize for Physics, Professor Brian Schmidt undertook his Nobel Prize winning work at ANU and remains a member of staff. RSAA is Australia's representative in many major international partnerships. These include the Giant Magellan Telescope, the largest optical telescope in the world. ANU is developing significant elements of the optics for this telescope, thus fostering new high technology industries. ANU is also the Australian link for involvement with the Gemini Observatory and the Keck telescope.

(f) Earth Sciences

The ANU Research School of Earth Sciences is the largest concentration of earth scientists in Australia and is regularly ranked in the top 20 such institutes in the world⁸⁸. The School not only studies the Earth itself but also the atmosphere and oceans. As such, it also has important research activities in climate and climate change.

⁸⁸ 2014 QS ranking for Earth Sciences – 12th in world.

(g) Others

The only significant university research presence in Australia in nuclear physics is located at ANU. Similarly, ANU is host and major partner in the National Computation Infrastructure (NCI), Australia's largest super computer which is operated as a national resource.

4. The Critical Importance of the NIG in Maintaining ANU's Distinctive Research Excellence

ANU's broad base of research excellence, and achievement of world-class research critical mass of a breadth and depth unmatched by any other Australian university, would not have happened, and could not be sustained in the future, without the NIG. Nor could ANU, without that support, maintain at the necessary level other enabling disciplines (such as mathematics, chemistry and physics) required for the development of these areas of critical mass.

The funding system for Australia's universities is student-numbers based. The major revenue source is student fees, a proportion of which cross-subsidises research. The deregulation of undergraduate domestic fees will provide welcome additional funds but will not change this basic business model. ANU's student body size, even if a determined effort were made to increase it over time, would never be capable of generating the income needed to maintain ANU's research excellence at its present breadth and depth. The limitations of the ACT as a student catchment base have been recognized throughout ANU's history: it has always been seen, and supported by successive Commonwealth Governments, as a uniquely research-intensive university making a unique national contribution.

An important more specific consideration is that the NIG enables ANU to build research critical mass in areas where student demand may be low. In all other Australian universities student choice largely dictates the size of teaching and research faculties. A good example of the impact of this is the crisis in Asian languages across Australia's universities. Although student choice needs to be respected, it is a danger if this ultimately reduces Australia's research, and associated teaching, capacity in areas of real national importance. Through ANU and the NIG, Australia provides important diversity in the research landscape, preserving areas of research critical mass important to the future of the nation.

An incidental benefit to ANU, and the nation, of the NIG is that the research concentration which it has generated has very real flow-on impacts to education, enabling a research-led educational experience at the very highest level – and one unique to ANU, enhancing student choice across the nation.

Overall, while in constant dollar terms, the value of the NIG (now \$180 million) has halved since 1995, the strategic importance of the grant to ANU, and to Australia, remains as strong today as it ever did, and it is critical that it be maintained at least at its present level in real terms.

5. ANU without the NIG

The NIG has given Australia a top 50 University and has immeasurably advanced Australian research – and as a result, our economy and our society. This has happened, and will continue to happen, only because of the research concentration achieved. If, for instance, these funds were invested in the ARC, or in research block grants to be distributed across a number of Australia's universities, it would have no measurable impact on the international rankings of those institutions.

Removal of the NIG would ensure that Australia lost a top 50 University, at a time when policymakers have been rightly emphasising the crucial need for our leading institutions to claw their way *up* these rankings. It is simply not possible in Australia to build a world-class research university with a student population of less than 20,000 students. ANU could expect the early exodus of scores of world leading researchers, and would lose its capacity to attract new such researchers. Its international rankings would quickly fall to around 200. Australia and the Australian university system would suffer major reputational damage, potentially severely impacting international education, our third largest export industry.

Above all, Australia would lose a unique research environment which has delivered much to this nation. As Nobel Prize winner Brian Schmidt has described it:

I could have conducted the work for which I won the Nobel Prize at no other Australian university. The NIG provided me the opportunity of long term support so critical in research of this nature. This exists nowhere else in Australia.

**Gareth Evans, Chancellor
Ian Young, Vice-Chancellor
The Australian National University**

6 November 2014

APPENDIX G - The National Institutes Funding Grant (NIG)

One of the main sources of funding for the Australian National University (ANU) is the national institutes block grant provided by the federal Government. This grant, valued at around \$188 million in 2013, constitutes almost 20% of all of the ANU's annual income.

In 2012 the ANU recorded total revenue (attributable to University continuing operations) of almost \$1 billion. Approximately two-thirds of this revenue takes the form of financial assistance from the Australian Government (AG), with the majority of remaining funds coming from fees and charges (largely comprising fee paying overseas student revenue).

Of the Australian Government Financial Assistance the ANU receives, 27% comes from the National Institutes Funding Grant (NIG), 24% from ARC and DIICCSRTE research grants, 12% from other Commonwealth Grant Scheme funding (including CSP places) and 8% from HELP AG payments.

Table G.1 ANU University Income, 2012 (\$'000)

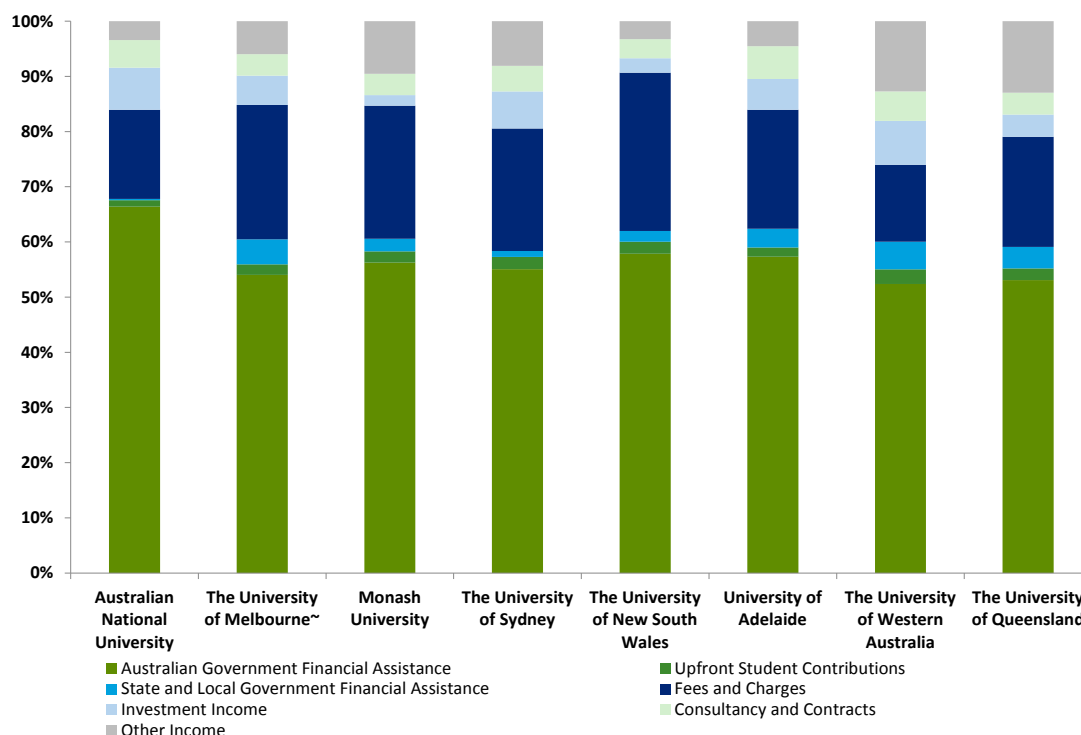
Total Revenues from Continuing Operations	\$994,861
Australian Government Financial Assistance	\$660,532
<i>Commonwealth Grants Scheme and Other Grants</i>	\$257,180
<i>National Institutes Funding</i>	\$180,896
<i>Commonwealth Grants Scheme</i>	\$70,558
<i>Other Grants</i>	\$5,726
<i>Scholarships</i>	\$13,832
<i>DIICCSRTE Research Grants</i>	\$76,923
<i>Education Investment Fund and One-off Capital Grants</i>	\$18,084
<i>Australian Research Council</i>	\$78,683
<i>Other Australian Government Financial Assistance</i>	\$161,217
<i>HECS-HELP - Australian Government Payments</i>	\$36,711
<i>FEE-HELP - Australian Government Payments</i>	\$16,845
<i>SA-HELP - Australian Government Payments</i>	\$1,057
State and Local Government Financial Assistance	\$2,421
Upfront Student Contributions	\$11,422
Fees and Charges	\$160,662
Investment Income	\$75,913
Royalties, Trademarks and Licenses	\$ -
Consultancy and Contracts	\$49,847
Other Income	\$34,016

Source: Department of Education Financial Performance Data 2012, ANU Annual report 2012

In terms of student numbers, the ANU is the smallest of the Group of Eight Universities (Go8) in Australia. Despite the considerable research output generated by the University, it is also the third smallest in terms of annual revenue. The ANU receives around half of the amount of annual revenue received by Melbourne University with a student base around 40% of the size.

Compared to other Go8 universities the ANU receives a greater proportion of its funding from the Commonwealth Government (Chart G.1). This is largely due to the NIG.

Chart G.1: Proportion of University income from various sources, 2012

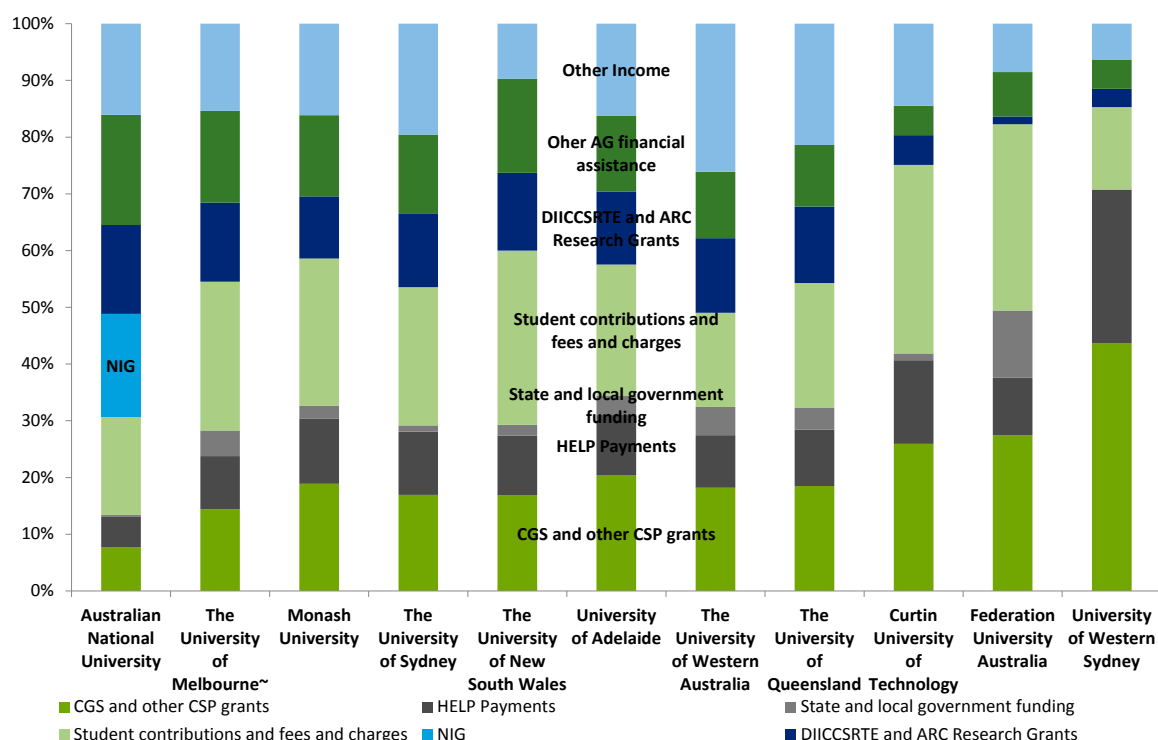


Source: Department of Education University Financial Performance Data 2012, University annual reports 2012

Of the Go8 universities, the ANU receives the smallest level of funding from State and local governments with only \$2.4 million dollars received in 2012. This is in comparison to \$81.7 million received by the University of Melbourne and \$61.4 million by the University of Queensland. Further, the ANU receives the second smallest amount of revenue from fees and charges of the Go8. In 2012 the ANU received fees and charges revenue of \$160.1 million, approximately 38% of the size of the fees and charges revenue received by the University of New South Wales. Similarly, because of its location and focus on postgraduate higher degree research and research more broadly, the ANU receives comparably little Commonwealth Grant Scheme funding for Commonwealth Supported Places (less than any other Go8 university and a number of regional universities).

Because of the ANU's location in Canberra, and the scope of its research focus (in particular the relative absence of medical research), the ANU currently receives little income in the form of non-government grants (in particular, grants from industry). The ANU received no income from non-government grants in 2012; this is in comparison to Monash University which received over \$50 million and the University of Queensland which received over \$100 million. Because of its relatively young age the ANU also receives comparably little in the form of donations and bequests. The University of Sydney (established in 1850) received over \$50 million in donations and bequests in 2012, in contrast to just over \$5 million received by the ANU.

Chart G.2: Detailed proportion of University income from various sources, 2012



Source: Department of Education University Financial Performance Data 2012, University annual reports 2012

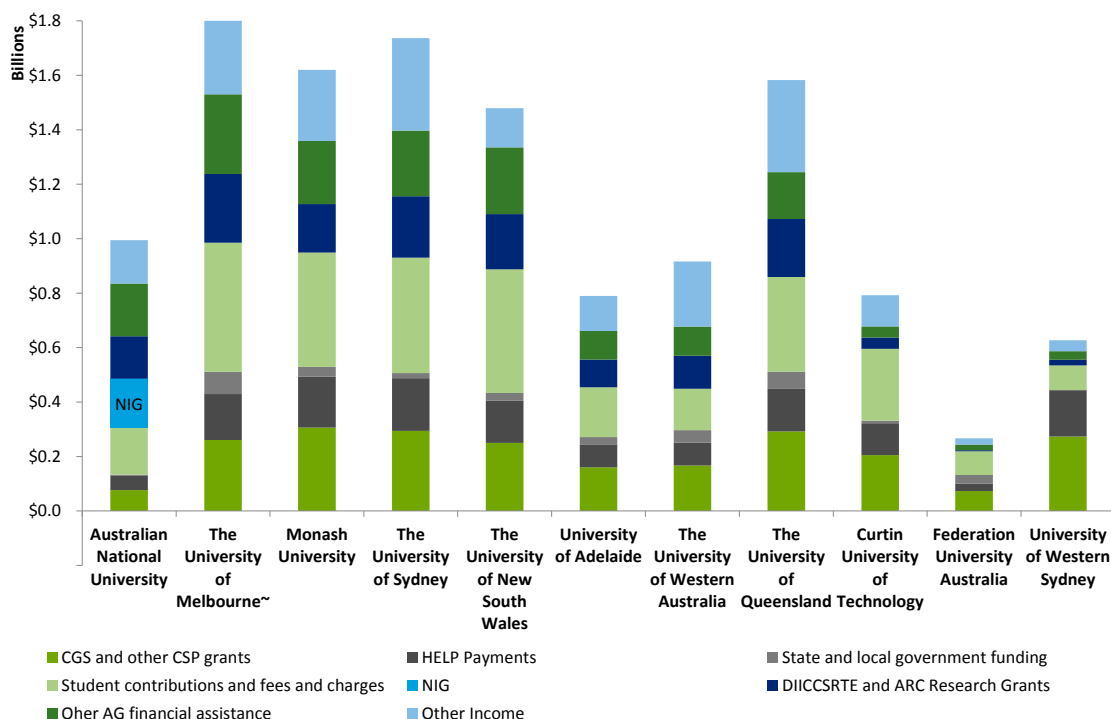
These combined factors highlight the important role that the NIG plays in supporting the operations of the ANU. As charts G.2 and G.3 demonstrate, without the NIG the ANU would be at a considerable resource disadvantage relative to all the Go8 Universities and three randomly selected, but quite different, universities which receive a great deal more funding from their student bases.

Table G.2 Go8 university student numbers, 2012

	Domestic students		International students	
	UG	PG	UG	PG
Australian National University	8086	6448	2158	3155
The University of Melbourne	18524	17534	6481	5943
Monash University	29462	11152	16306	5647
The University of Sydney	27042	13576	5518	5283
The University of New South Wales	24833	12093	6394	5969
University of Adelaide	14345	4107	3815	2996
The University of Western Australia	15681	3904	3759	1664
The University of Queensland	27695	7330	5698	5141

Source: Department of education higher education statistics, 2012

Chart G.3: University income received from various sources (\$billions)



Source: Department of Education University Financial Performance Data 2012, University annual reports 2012

The resourcing provided by the NIG for the ANU means that, despite its relatively small size, ANU is regularly ranked first or second in Australia, and in the top 50 universities in the world.

A major measure of ANU's comparative excellence is that it regularly performs at a high level in grants awarded by the Australian Research Council. Funding awarded to ANU, per member of academic staff in the various major schemes, is above the Go8 average. This is reflective of the ANU's relative research focus and may further demonstrate the effectiveness of the NIG in generating exceptional research outcomes for the ANU and Australia more broadly.

Research excellence and international ranking for universities in Australia are generally predicted by a university's scale. The exception to this is the ANU, largely due to the role that the NIG plays in supporting the University's operations. Because of ANU's relatively regional location and research focus, a reduction or removal of the NIG would result in a fall in revenue that may not be able to be offset by an increase in revenue from increased student numbers or fees. As such, the ANU would likely be unable to maintain the same degree of excellence without the ongoing support of the Australian Government through the NIG.

The data presented in this Appendix demonstrates that the ANU is relatively efficient compared to other research intensive universities, with regard to the quality and pre-eminence in its research output relative to the magnitude of its funding inputs. This efficiency may be partly attributable to the role that the NIG plays in supporting the ANU to achieve the necessary scale required to develop centres of research excellence that effectively contribute to national social and economic welfare.

The ANU, like other research intensive universities, makes continued, significant and long-term investments in its physical, social and human capital. Like most universities, the ANU experiences economies of scale in its investment and production activities.⁸⁹

As a result of the nature of university cost curves, changes to the NIG would not only reduce the level of output achieved by the ANU, but may also reduce the efficiency with which its existing capital infrastructure is used. Further, existing capital – both physical and human – which has been accumulated over time, and for the specific purpose of national university operations, may not easily be transferred into other productive uses, potentially resulting in an overall loss in productive capacity for both the regional and national economy.

⁸⁹ See:

Cohn and Cooper (2006), "Multi-product cost functions for universities: economies of scale and scope", in Geraint Johnes and Jill Johnes (eds), *International Handbook on the Economics of Education*, Edward Elgar: 579-612.

Bonaccorsi, A. Daraio, C. and Simar, L. (2014). "Efficiency and economies of scale and scope in European universities. A directional distance approach," *DIAG Technical Reports 2014-08*, Department of Computer, Control and Management Engineering, Università degli Studi di Roma "La Sapienza".

Lloyd, P. J., Morgan, M. H., & Williams, R. A. (1993), "Amalgamations of universities: Are there economies of scale or scope?", *Applied Economics*, 25, 1081–1092.

Worthington, AC. and Higgs, H. (2011) "Economies of scale and scope in Australian higher education", *Higher Education*, 61,387-414.

Detailed University income table

	Group of Eight Universities							Regional Universities				
	ACT	Victoria		NSW		SA	WA	Queensland	WA	Victoria	NSW	Australia
	Australian National University	The University of Melbourne~	Monash University	The University of Sydney	The University of New South Wales	University of Adelaide	The University of Western Australia	The University of Queensland	Curtin University of Technology	Federation University Australia	University of Western Sydney	All Institutions
Total Revenues from Continuing Operations	\$994,861	\$1,807,760	\$1,620,072	\$1,736,502	\$1,479,235	\$789,732	\$916,222	\$1,582,689	\$792,438	\$266,690	\$627,147	\$25,210,033
Australian Government Financial Assistance	\$660,532	\$974,384	\$902,445	\$955,056	\$852,538	\$451,643	\$479,486	\$835,849	\$404,896	\$124,796	\$495,734	\$14,675,951
<i>Commonwealth Grants Scheme and Other Grants</i>	\$257,180	\$260,739	\$306,124	\$294,095	\$250,195	\$160,621	\$166,685	\$292,547	\$205,491	\$73,162	\$273,638	\$6,350,518
<i>National Institutes Funding*</i>	\$180,896	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$180,896
<i>Commonwealth Grants Scheme**</i>	\$70,558	\$250,449	\$295,311	\$290,479	\$242,889	\$148,180	\$161,500	\$286,185	\$200,551	\$50,491	\$244,739	n/a
<i>Other Grants***</i>	\$5,726	\$10,290	\$10,813	\$3,616	\$7,306	\$12,441	\$5,185	\$6,362	\$4,940	\$22,671	\$28,899	n/a
<i>Scholarships</i>	\$13,832	\$28,252	\$20,354	\$25,673	\$22,804	\$12,651	\$11,528	\$23,501	\$7,577	\$975	\$3,371	\$287,026
<i>DIICSRTE Research Grants</i>	\$76,923	\$163,930	\$109,421	\$149,544	\$130,028	\$68,721	\$72,287	\$130,925	\$30,142	\$3,092	\$13,525	\$1,372,166
<i>Education Investment Fund and One-off Capital Grants</i>	\$18,084	\$91,611	\$50,510	\$69,100	\$17,827	\$325	\$11,000	\$31,761	\$1,300	\$ -	\$12,574	\$539,203
<i>Australian Research Council</i>	\$78,683	\$88,301	\$68,157	\$76,382	\$72,568	\$33,023	\$48,380	\$82,592	\$11,329	\$550	\$6,828	\$772,833
<i>Other Australian Government Financial Assistance</i>	\$161,217	\$172,582	\$161,060	\$146,327	\$204,803	\$92,023	\$84,823	\$116,685	\$32,135	\$19,980	\$15,905	\$1,667,529
<i>HECS-HELP - Australian Government Payments</i>	\$36,711	\$109,500	\$151,082	\$131,584	\$119,934	\$75,914	\$76,456	\$134,194	\$96,065	\$23,913	\$156,231	\$3,036,965
<i>FEE-HELP - Australian Government Payments</i>	\$16,845	\$56,455	\$31,995	\$59,628	\$32,658	\$6,596	\$7,949	\$19,800	\$18,993	\$2,487	\$8,618	\$592,961
<i>SA-HELP- Australian Government Payments</i>	\$1,057	\$3,014	\$3,742	\$2,723	\$1,721	\$1,769	\$378	\$3,844	\$1,864	\$637	\$5,044	\$56,750
State and Local Government Financial Assistance	\$2,421	\$81,771	\$36,452	\$18,539	\$28,672	\$26,550	\$45,666	\$61,319	\$9,249	\$31,665	\$459	\$792,512
Upfront Student Contributions	\$11,422	\$34,429	\$33,246	\$38,671	\$32,077	\$13,223	\$24,457	\$33,425	\$25,628	\$2,340	\$17,494	\$577,777
Fees and Charges	\$160,662	\$439,668	\$386,792	\$385,020	\$422,480	\$169,866	\$127,608	\$313,989	\$238,013	\$85,194	\$73,415	\$5,591,481
<i>Continuing Education</i>	\$8,402	\$2,415	\$ -	\$11,725	\$15,781	\$574	\$9,819	\$2,696	\$2,478	\$146	\$68	\$122,337
<i>Fee Paying Overseas Students</i>	\$98,905	\$331,365	\$319,271	\$283,675	\$294,189	\$133,025	\$95,393	\$267,973	\$180,469	\$60,103	\$57,791	\$4,134,768
<i>Fee Paying Non-Overseas Postgraduate Students</i>	\$8,127	\$24,723	\$14,836	\$23,507	\$23,720	\$4,106	\$5,218	\$11,869	\$12,716	\$4,118	\$2,934	\$274,174
<i>Fee Paying Non-Overseas Undergraduate Students</i>	\$ -	\$2,765	\$3,827	\$4,436	\$6,495	\$1,175	\$ -	\$3,509	\$6	\$ -	\$240	\$80,358
<i>Fee Paying Non-Overseas Non-Award Students</i>	\$717	\$ -	\$1,232	\$9,702	\$ -	\$3,767	\$ -	\$576	\$23,378	\$181	\$1,046	\$58,883
<i>Other Domestic Course Fees and Charges</i>	\$ -	\$9,512	\$11,822	\$26,787	\$ -	\$3,506	\$ -	\$ -	\$ -	\$1,642	\$252	\$162,658
<i>Student Services and Amenities Fees</i>	\$1,698	\$2,382	\$5,301	\$8,005	\$4,606	\$1,751	\$3,345	\$3,230	\$1,696	\$494	\$2,590	\$85,129
<i>Other Fees and Charges</i>	\$42,813	\$66,506	\$30,503	\$17,183	\$77,689	\$21,962	\$13,833	\$24,136	\$17,270	\$18,510	\$8,494	\$673,174
Investment Income	\$75,913	\$95,633	\$30,876	\$116,361	\$38,950	\$44,080	\$72,930	\$63,624	\$25,122	\$15,920	\$2,276	\$922,944
Royalties, Trademarks and Licenses	\$ -	\$3,989	\$15,215	\$2,127	\$5,694	\$1,870	\$773	\$7,869	\$22,883	\$ -	\$185	\$85,212
Consultancy and Contracts	\$49,847	\$69,957	\$61,941	\$80,551	\$50,981	\$46,696	\$48,860	\$62,445	\$27,093	\$5,421	\$11,259	\$1,035,264
Other Income	\$34,016	\$107,929	\$153,105	\$140,177	\$47,843	\$35,804	\$116,442	\$204,169	\$39,554	\$1,354	\$26,325	\$1,530,492
<i>Donations and Bequests</i>	\$5,310	\$23,968	\$8,225	\$50,855	\$22,681	\$6,890	\$38,914	\$23,393	\$1,969	\$127	\$1,605	\$284,035
<i>Scholarships and Prizes</i>	\$410	\$ -	\$6,885	\$5,371	\$6,706	\$1,890	\$1,181	\$4,065	\$ -	\$26	\$1,298	\$65,422
<i>Non-Government Grants</i>	\$ -	\$41,098	\$50,025	\$29,888	\$2,122	\$ -	\$6,705	\$111,986	\$9,638	\$ -	\$465	\$313,424
<i>Net Gain on Disposal of Property, Plant and Equipment</i>	\$ -	\$ -	\$ -	\$152	\$3,253	\$ -	\$ -	\$ -	\$67	\$ -	-\$3,126	\$5,442
<i>Net Foreign Exchange Gains</i>	\$ -	\$250	\$116	\$ -	\$ -	\$406	\$ -	\$368	\$ -	\$ -	\$ -	\$1,256
<i>Other Revenue</i>	\$28,296	\$42,613	\$87,854	\$53,911	\$13,081	\$26,618	\$69,642	\$64,357	\$27,880	\$1,201	\$26,083	\$860,913
Share of Net Result	\$48	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-\$1,600

Source: Department of Education University Financial Performance Data 2012, University annual reports 2012⁹⁰

⁹⁰ The University of Melbourne's reported financial data for 2012 differs slightly from the data recorded by the Department of Education (DoE). Where relevant DoE data has been recorded here, with the exception of the detailed breakdown of Commonwealth Grant Scheme and Other Grant income where the University of Melbourne's annual financial report's data is used.

APPENDIX H - Preamble

The University of Melbourne was created by the Parliament of the fledgling Colony of Victoria as one of several demonstrations of pride, confidence and aspiration for its future.

The preamble to the University Act, 16 Victoria, Act No. 34 declared "...it is expedient to promote sound learning in the Colony of Victoria and with that intent to establish incorporate and endow an University at Melbourne open to all classes and denominations of Her Majesty's subjects...". The University came into being on 11 April 1853.

The Act set in motion the appointment of a Council to manage its staff, affairs and property and enabled the matriculation of students to study for admission to degrees in Arts, Medicine, Law and Music, and the affiliation of colleges and licensing of other establishments as student residences.

The University was endowed with an annual grant from the Treasury.

The administration of any religious test in connection with the obtaining of any "advantage or privilege" of the University was expressly debarred. The University's degree granting powers were subsequently extended to encompass all disciplines, except divinity.

On 14 March 1859 Queen Victoria granted Letters Patent that the University's degrees in the fields of Arts, Medicine, Law and Music "shall be recognised as Academic distinctions and rewards of Merit and be entitled to rank precedence and consideration in Our United Kingdom and in Our Colonies and possessions and throughout the world as fully as if the said degrees had been granted by any University of Our said United Kingdom".

In 1881 The University of Melbourne was the first university in Australia and one of the first in the world to admit women. The first woman to graduate from the University did so in December 1883.

Subsequently the University and its colleges were enriched by the gifts of many civic-minded Victorians, it forged enduring links with the city's growing cultural and professional institutions. The first anatomy lessons in the southern hemisphere were one of many significant contributions it made to education in the broader region.

In the post Second World War period, it became a much larger institution drawing not only more broadly from across the Victorian population but from across Australia and with a significant proportion of international students.

It mentored the undergraduate school of the Australian National University. The University granted the first Australian Doctorates of Philosophy in 1948.

Graduates and former students of the University have contributed to inquiry, knowledge, understanding and achievement in many fields and have thereby enriched Victoria, Australia and the world.

The University of Melbourne is a public-spirited institution with a mission that encompasses learning and teaching, research and knowledge transfer, all of which exist for public benefit.

APPENDIX I - Sections in the 1991 Act that are inactive, outdated or obsolete

1. The ANU is no longer organised in a way that includes Faculties; instead, the [relevant academic units are currently colleges and schools with some institutes and centres](http://about.anu.edu.au/governance-structure/university-structure/academic-structure) - <http://about.anu.edu.au/governance-structure/university-structure/academic-structure> There are currently references to Faculties in sections 3, 7 and 10
2. “General” staff are usually now referred to as “professional staff”. See the definition in section 3.
3. Part 2 of Division 5 deals with ‘Convocation’. We were advised that it has never met and no roll has been kept.

APPENDIX J - Suggestions

Paragraph 3 The 'special' role of the Australian National University: the statement of functions (or purpose), a preamble to the Act, the powers of the University and reporting on the NIG

We **suggest** that the ANU community - academic and professional staff, students and other stakeholders - be given an opportunity to comment on the preamble as it is developed. A similar approach could be taken to the drafting of the University's functions (or purpose).

We **suggest** that a member of the senior executive should be designated as holding responsibility for documenting how the NIG is allocated.

Paragraph 5.5.3 Council appointed members and Paragraph 6.2 Academic Board

We **suggest** that consideration should be given to making the Chair of the Academic Board one of the Council appointed members.

Paragraph 6.3 Audit and Risk Management Committee

It is **suggested** that the terms of reference of the Audit and Risk Management Committee might be clearer if they included:

- ensuring that the University's audited financial statements and accounts comply with the University's statutory responsibilities and recommending to Council that those financial statements and accounts be approved, and signed, for inclusion in the University's Annual Report.

We also **suggest** that Council clarify what is encompassed by the reference in the terms of reference of the Finance Committee to "consider the annual audited financial statements of the University" so that the roles of the two Committees are clear in this regard. It might provide clarity if the terms of reference of the Finance Committee were to provide that the Finance Committee is responsible for:

- overseeing the preparation of the annual financial statements of the University .

Paragraph 6.6 Finance Committee and Investment Advisory Committee

If our recommendation regarding ... [a *Campus Planning Committee* or *Building and Estates Committee*] is taken up, we **suggest** that the Finance Committee's terms of reference should be amended to make it clear that the Finance Committee advises the Council on the financial aspects associated with the University's physical resources.

Paragraph 6.7 Nominations Committee of Council

We **suggest** that [the Nominations Committee gives] consideration ... to ... including a member or members with international higher education experience, particularly someone with experience at another 'national' university.

Paragraph 6.8 Honorary Degrees Committee

We **suggest** that Council consider broadening the role of the [Honorary Degrees] Committee to include identifying and nominating appropriate people associated with the University to be proposed by the University for recognition under the national honours scheme.

Paragraph 7.1 Induction and professional development

In terms of ensuring that Council members are aware of their duties and responsibilities and are acquainted with aspects of ANU's operations, we make two **suggestions**. First, it might assist Council members if they were provided with a glossary of terms to assist them to understand language that may be unfamiliar to them (EFTSL, NUHEP, TEQSA, Go8 etc). Secondly, several members said that they would like to better understand the University's finances; we suggest that the relevant officer(s) should provide a follow up session for new Council members, to which other members could also attend, a month or so after the initial induction briefings.

Paragraph 10 Meetings and meeting papers

We **suggest** that ... the responsibilities referred to in paragraph 4.1 ... should be mapped against ... [the rolling agenda program for Council meetings] to ensure that the responsibilities of Council are covered.

We **suggest** that reports from all Council Committees and the Academic Board should take the form of a report regarding each meeting held since the last report to Council. In addition to identifying any recommendations for Council, the report should summarise 'significant items considered' and list, in bullet dot form, 'other items considered', rather than including the full minutes. The report could state that full minutes are available upon request from the Corporate Governance and Risk Office.

We also **suggest** that Council consider including a 'general discussion item' in each agenda after 'key business items' during which Council members could raise with the Vice-Chancellor or a member of the Executive any issue of concern. This would be in addition to the current general 'question time' which is located at the end of the Council agenda as part of 'other business'.

We **suggest** that, if it is necessary to proceed with a formal vote, it should be possible to revert to rules that deal with matters such as:

- Voting – the rules might specify that:
 - o voting must be by show of hands and the result must be declared by the Chair; and
 - o the Chair has a vote and, in the case of an equality of votes, a casting vote
- Amendments to motions – the rules might specify that:
 - o an amendment moved by a member must not be discussed or put to the vote unless it has been seconded by another member; and
 - o a substantive motion or an amendment, other than one dealing with a procedural matter, must be reduced to writing, signed by the mover, and handed to the Minute Secretary immediately it has been moved and seconded.



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